86-1450

No. .

In the
Supreme Court of the United States.

OCTOBER TERM, 1986.

PETROS A. PALANDJIAN,
PETITIONER,

v.

ASHRAF PAHLAVI,
RESPONDENT.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

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Question Presented.

Whether the granting of summary judgment is erroneous where the trial court must make a factual determination concerning the opposing party's state of mind and where such factual determination was based on inferences which did not favor the opposing party?

List of the Parties.

All parties to this action appear in the caption of this petition.

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Introductory Prayer.

The Petitioner, Petros A. Palandjian ("Palandjian") respectfully prays that a writ of certiorari issue to review the order of judgment of the United States Court of Appeals for the First Circuit (the "First Circuit") entered in this proceeding on December 8, 1986.

Opinions Below.

The opinion of the First Circuit, dated December 8, 1986 ("Op."), was not reported. It is reprinted in the Appendix attached hereto ("App.") at App. Q, 96a. Also reprinted therein are the order of the District Court for the District of Massachusetts (the "District Court"), dated February 24, 1986 (App. L, 60a), the *per curiam* opinion of the First Circuit dated January 30, 1986 (App. N, 62a), the memorandum and order of the District Court, dated August 26, 1985 (App. O, 66a) and the opinion of the District Court, dated August 16, 1985, which is reported at 614 F. Supp. 1569 (D. Mass. 1985) (App. P, 71a).

Jurisdiction.

The First Circuit judgment was entered on December 8, 1986. This Petition for Certiorari was filed within ninety-one days of that date in accordance with 28 U.S.C. § 2101(c) and Supreme Court Rule 29.1, which allows a party to file a petition on the business day following the last day of the ninety day period if, as here, the last day falls on a Sunday. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Statutes Involved.

Federal Rule of Civil Procedure 56(c), codified in 28 U.S.C., provides in pertinent part that:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories

> and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(App. A, 1a)

Federal Rule of Civil Procedure 56(e), codified in 28 U.S.C., provides in pertinent part that:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(App. A, 2a.)

Statement of the Case.

Palandjian brought suit against Pahlavi to recover for services rendered and for investments made in several business ventures he had entered into with respondent Ashraf Pahlavi, the twin sister of the former Shah of Iran ("Pahlavi"). Pahlavi asserted a statute of limitations defense and Palandjian claimed that he did not file suit sooner because of duress and because of his fear that Pahlavi and her family would retaliate if he did so. The jurisdiction of the District Court was invoked under 28 U.S.C. § 1332 by reason of diversity of citizenship, Palandjian

being a citizen of Massachusetts and Pahlavi being a citizen of Iran. The discussion below relates the basis for Palandjian's claim of duress, the procedural posture of the case and the findings of the First Circuit.

In June 1966, Palandjian, a dual national Iranian/American citizen who has resided in the United States since 1963, first met Pahlavi when she accompanied Leon Palandjian (hereinafter "Leon"), Palandjian's brother and Pahlavi's personal assistant, on a week long visit to Boston (Palandjian Affidavit dated November 30, 1983 ("Pal. Aff. I"), para. 4; App. B, 4a; Palandjian Affidavit dated December, 1984 ("Pal. Aff. II") para. 2, App. C, 10a). During this visit, Pahlavi proposed to Palandjian that they develop property she owned or could purchase on the Caspian Sea at Babolsar, Iran (Pal. Aff. I, para. 6; App. B, 4a). They agreed that Pahlavi would provide the property, valued at approximately $2 million; Palandjian would invest up to $2 million in time, equipment and personnel for construction; Palandjian and Leon would form a company to develop the Babolsar land; and Palandjian would charge cost plus fifteen percent (15%) for construction work on the project (Pal. Aff. I, para. 7; App. B, 5a). After the repayment of any loans or bank debts and the repayment to Pahlavi and Palandjian of their initial investments, all profits would be divided equally between them. (*Id.*)

Pahlavi and Palandjian also discussed the need for aviation development in Iran (Pal. Aff. I, para. 10; App. B, 6a). They agreed to contact Cessna Aircraft to obtain an exclusive distributorship for Cessna Aircraft in Iran (*Id.*) Palandjian was to have an eighty-five percent (85%) interest and Pahlavi a fifteen percent (15%) interest in all profits arising therefrom. (*Id.*)

The agreements between Palandjian and Pahlavi concerning Kazar Shahr and Cessna were oral (Pal. Aff. I, para. 7 and 10; App. B, 5a, 6a). Palandjian did not ask Pahlavi to sign a written contract on these matters for fear of insulting her (Pal. Aff. II, para. 6; App. C, 11a). There are however many docu-

ments, produced by Palandjian in the course of the proceeding below, which evidence his involvement in these projects and his performance of these contracts (Pal. Aff. II, para. 26; App. C, 14a).

Pursuant to these agreements, Palandjian and Leon formed a company, Abadani Jazayer, to develop Kazar Shahr (Pal. Aff. I, para. 8; App. B, 5a). The shares of Abadani Jazayer were given to Palandjian's father, Grigor Palandjian (hereinafter "Grigor") to hold in his safe in Tehran. Fifty percent (50%) of the shares were for the benefit of Pahlavi and fifty percent (50%) were for Palandjian. (*Id.*)

Palandjian obtained the exclusive distributorship for Cessna Aircraft in Iran (Pal. Aff. I, para. 10; App. B, 6a). Palandjian and Leon formed a company, Hooraseman, to sell aircraft and parts and gave the Hooraseman shares to Palandjian's father to hold (Pal. Aff. II, para. 9; App. C, 11a).

From 1966 to July 1969, Palandjian performed his part of the agreement concerning the development of Kazar Shahr (Pal. Aff. I, para. 12; App. B, 6a) and the Cessna distributorship. He performed such work in Iran and Massachusetts.

In July 1969, Leon, who had been president of both companies, died in an airplane crash in Iran (Pal. Aff. II, para. 10; App. C, 11a). At Pahlavi's request, Palandjian assumed the title of President of Abadani Jazayer and Hooraseman and moved to Iran to supervise the two operations. (*Id.*)

During the 1969-1970 period, Palandjian directed and substantially completed site preparation of the development at Kazar Shahr: grading and leveling, sewers, lighting, electricity, roads, water, the base course for asphalt, towers, reservoirs, wells and landscaping (Grigor Nazarian Deposition dated November 2, 1984, ("Naz. Dep."); App. D, 17a, 18a). The cost to Palandjian for this construction work was approximately one million seven hundred thousand dollars (Pal. Aff. II, para. 14; App. C, 12a). In 1970, the lots at Kazar Shahr were ready for marketing (Pal. Aff. I, para. 13; App. B, 6a).

In December 1970, Palandjian had a dispute with Pahlavi concerning the amount of time he spent in Iran and his interest in selling Abadani Jazayer and Hooraseman (Pal. Aff. II, para. 15; App. C, 12a). Palandjian had received two offers to purchase Abadani Jazayer, one for ten million dollars and one for sixteen million dollars, and had signed papers to sell Hooraseman for one million dollars. (*Id.*)

Pahlavi was angered by Palandjian's suggestion that the businesses be sold. She threatened Palandjian in writing:

> I swear to my highest belief that you will never set foot in Iran while I am alive. You are free to leave here whenever you want even if you want to leave tonight. P.S. You are free to go wherever you want.

(Pal. Aff. II, para. 16; App. C, 12a.)

Fearing Pahlavi's threat to him, Palandjian did not return to Iran (Pal. Aff. II, para. 17; App. C, 12a). He returned to Massachusetts to supervise the activities of Abadani Jazayer and Hooraseman. (*Id.*)

Pahlavi subsequently moved to wrest control over the projects from Palandjian. In early 1971, Pahlavi named one Sanatizadeh as the new president of Abadani Jazayer. Sanatizadeh went to Abadani Jazayer's office in Tehran, Iran where he was verbally abusive and threatening both to the staff and to Grigor (Naz. Dep.; App. E, 20a, 21a). He announced that all documents and models were to be handed over to him as he was taking over the company, and the staff unwillingly complied. *Id.*[1]

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[1] Before following Sanatizadeh's order, the project manager called Palandjian in the United States. Palandjian instructed him to comply with Sanatizadeh's demands, stating: "You can't oppose them (Pahlavi). You can't keep the project. If they want, you have to give them." (Naz. Dep.; App. E, 21a.)

Izadi, Pahlavi's personal assistant, visited Grigor to gain possession of the shares which Grigor held. Izadi demanded the shares, telling Grigor "We will have you killed" and "If you and your son and family want to live here without any danger, give me the stocks." (Grigor Palandjian Deposition dated September 13, 1984 ("Grigor Dep."); App. F, 24a, 25a). Grigor telephoned Palandjian who spoke with Pahlavi several times concerning Izadi's demand. Pahlavi stated that, as Palandjian had been holding her shares for several years, she was now going to hold his shares for him (Pal. Aff. II, para. 19; App. C, 12a). Given Pahlavi's insistence, her threats, her position in the royal family and her statement that she would hold his shares for his benefit, Palandjian acceded to the demand (Pal. Aff. II, para. 20; App. C, 12a, 13a).

Shortly thereafter, in 1971, Pahlavi's cousin, Shahriar Dadsetan, visited Palandjian in Massachusetts. Dadsetan told Palandjian that he either had to return to Iran at Pahlavi's direction or relinquish his rights to the Cessna distributorship, which Pahlavi wanted for her son Chahram (Pal. Aff. I, para. 17; App. B, 6a, 7a; Pal. Aff. II, para. 21; App. C, 13a). Still fearing Pahlavi's past threats, Palandjian was unwilling to return to Iran (Pal. Aff. II, para. 21; App. C, 13a). Dadsetan became increasingly belligerent, stating, "She wants Cessna Aircraft. She wants you to give up Cessna if you're not coming back" and "I'm sure you don't want to take a chance and have something unpleasant happen to your mom, to your dad. They have a pleasant life." (*Id.*) Palandjian called Pahlavi in Iran to determine why Dadsetan was threatening him. (*Id.*) Pahlavi said that Dadsetan was her representative and that Palandjian was to do what Dadsetan said. (*Id.*) After this conversation, Palandjian unwillingly signed papers which effectively turned over the Cessna distributorship to Pahlavi's representative. (*Id.*)

From 1971 through 1982, Palandjian remained in contact with Pahlavi, speaking with her by phone and periodically meeting her in Geneva or New York (Pal. Aff. II, para. 22; App. C, 13a). To one of these meetings, Palandjian was accompanied by an attorney (Op.; App. Q, 99a). During these calls and meetings, Palandjian raised the issue of monies Pahlavi owed him from Hooraseman and Abadani Jazayer. Pahlavi acknowledged her debts to him. (*Id.*) At a meeting in Geneva in 1972, Pahlavi told Palandjian that she had instructed Izadi to pay him one million seven hundred thousand dollars for the unpaid portion of his construction work on the Kazar Shahr development (Pal. Aff. II, para. 23; App. C, 13a, 14a). Palandjian told her he had not received the money. (*Id.*) To convince Palandjian of his error in recommending the sale of Abadani Jazayer and Hooraseman, she added that the project had already made twenty-five million dollars and would make in excess of fifty million dollars. (*Id.*) When Palandjian asked to be paid for his share of the profits, Pahlavi assured him that he would be paid. (*Id.*)[2] Palandjian to date has received no payment for his interests in Abadani Jazayer and Hooraseman (Pal. Aff. I, para. 19; App. B, 7a).

Until 1983, Palandjian refrained from suing Pahlavi because he feared the consequences to his family and property in Iran and the United States (Pal. Aff. II, paras. 20, 21 and 25; App. C, 12a, 13a, 14a). Like many Iranians, Palandjian believed that the royal family would return to power and that the Pahlavi family would continue to exercise control while outside Iran (Pal. Aff. II, para. 25; App. C, 14a). It was not until after the Shah died in 1980 and the Pahlavis had been out of power for five years that Palandjian felt he could commence this liti-

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[2] In an interview published in February 1982 in the *Boston Globe*, Pahlavi stated that she had sold 1400 vacation homes in Kazar Shahr and that the Kazar Shahr development was her only source of revenue (Ronald Koven Deposition dated October 26, 1984; App. G, 31a).

gation without endangering the lives and property of his family and himself. (*Id.*)

Palandjian filed suit against Pahlavi on July 27, 1983 wherein he alleged breach of contract (Count I), conversion (Count II), unjust enrichment (Count III), and quantum merit (Count IV). By amended complaint of July 19, 1984, Palandjian also claimed breach of fiduciary duty (Count V) (Amended Complaint dated July 19, 1984; App. H, 36a).

Following the completion of discovery, Pahlavi filed her Motion for Summary Judgment on November 14, 1984, asserting Palandjian's claims were barred by the statute of limitations and the statute of frauds (App. I, 46a). By order of August 16, 1985, the trial court denied Pahlavi's Motion on her statute of limitations grounds; the court also dismissed Counts III and V of the amended complaint, stating that Palandjian could not maintain inconsistent and alternative factual allegations (App. P, 71a). By order of August 26, 1985, the trial court denied Pahlavi's Motion on her statute of frauds defense (App. O, 66a).

In its August 16, 1985 order, the trial court invited Pahlavi to seek an interlocutory appeal, pursuant to 28 U.S.C. § 1292(b), of the limited issue of the extent of the duress exception to the Massachusetts statute of limitations. *Palandjian* v. *Pahlavi*, No. 83-2199-Y at 17 (D. Mass. August 16, 1985) (order denying summary judgment) (App. P, 71a). Pahlavi filed an interlocutory appeal on August 30, 1985. In a *per curiam* opinion, the First Circuit vacated its order allowing the interlocutory appeal and directed the trial court to develop facts further, to certify questions to the Supreme Judicial Court or "to proceed to decide other issues, as it believes appropriate." *Palandjian* v. *Pahlavi*, 782 F.2d 313, 314 (1st Cir. 1986). (The *per curiam* opinion dated January 30, 1986 is included at App. N, 62a.)

Thereafter, Pahlavi, alleging no new facts, filed a Motion for Reconsideration of Summary Judgment (App. K, 58a). By

a one paragraph, hand-written notation of February 24, 1986, the trial court allowed Pahlavi's Motion for Reconsideration and for Summary Judgment (App. L, 60a).

On May 20, 1986, Palandjian appealed to the First Circuit from the trial court's February 24, 1986 order and the August 16, 1985 order referred to therein. On December 8, 1986 the First Circuit affirmed the lower court's grant of summary judgment.

Palandjian's present petition arises from the First Circuit's December 8, 1986 ruling with respect to his claim of duress. The First Circuit held that Palandjian's allegations of duress were not sufficient to avoid summary judgment on Pahlavi's statute of limitations defense (Op.; App. Q, 97a). The court made two assumptions before so holding. First, it assumed that "Massachusetts Courts would recognize duress as tolling the statute of limitations in at least certain situations." *See Babco Industries, Inc.* v. *New England Merchants National Bank*, 6 Mass. App. Ct. 929, 930, 380 N.E.2d 1327, 1328 (1978) (Op.; App. Q, 97a). Second, it assumed that "Massachusetts would use a subjective standard for evaluating fear." *See Omansky* v. *Shain*, 313 Mass. 129, 130, 46 N.E.2d 524, 525 (1943) (Op.; App. Q, 97a). Nevertheless, the court held that:

> Although the threats made between 1970 and 1972 might otherwise suffice to establish duress against the filing of a lawsuit, we conclude that Massachusetts would not give them such significance in light of this subsequent history. Indeed, it strains logic to rest a claim of duress against filing a lawsuit on threats unconnected to appellant's pursuit of his legal rights when appellant, in fact, repeatedly took actions similar in kind to filing suit without provoking the slightest suggestion of a threat. There is nothing in

> the record to show that defendant would have reacted differently to the formality of filing a lawsuit than she did to appellant's demands for payment, including one made while he was accompanied by a lawyer. Even if appellant subjectively feared retaliation from defendant if he filed the lawsuit, we believe that Massachusetts would rule that he failed as a matter of law to establish that he was actually under duress. Thus, the District Court correctly granted summary judgment for defendant on this issue.

(Op.; App. Q, 99a-100a.)

Reasons for Granting the Writ.

I. THE DECISION BELOW CONFLICTS WITH SUPREME COURT PRECEDENT SINCE IT FAILS TO VIEW INFERENCES IN A LIGHT MOST FAVORABLE TO THE OPPOSING PARTY OR TO CONSIDER THAT STATE OF MIND IS AT ISSUE.

The Supreme Court has set forth standards for determining whether factual evidence and the inferences which may be drawn therefrom establish a genuine issue of fact for trial. *Anderson* v. *Liberty Lobby, Inc.*, 106 S. Ct. 2505 (1986); *Matsushita Electric Industrial Co., Ltd.* v. *Zenith Radio Corp.*, 106 S. Ct. 1348 (1986) and *United States* v. *Diebold, Inc.*, 369 U.S. 654 (1962). The First Circuit's opinion in the case at bar is inconsistent with this Court's rulings therein set forth. In particular, the First Circuit failed to view the inferences to be drawn from the underlying facts in a light most favorable to the non-moving party, and it failed to recognize the error in

granting summary judgment where petitioner's claims of duress raised issues of state of mind, subjectivity and credibility.

A. *Inferences Must be Viewed in a Light Most Favorable to the Opposing Party.*

The First Circuit's entry of summary judgment was in error because it failed to view "the inferences to be drawn from the underlying facts . . . in a light most favorable to the party opposing the motion." *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962). *Accord, Anderson* v. *Liberty Lobby, Inc.*, 106 S. Ct. 2502, 2513 (1986); *Matsushita Electric Industrial Co., Ltd.* v. *Zenith Radio Corp.*, 106 S. Ct. 1348, 1356-1357 (1986); *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 158 (1970); *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962).

In *Diebold*, the Supreme Court stated that summary judgment was erroneously granted where a lower court's "findings represent a choice of inferences to be drawn from the subsidiary facts," and "inferences contrary to those drawn by the trial court might be permissible." In *Diebold*, the government instigated a civil antitrust suit to challenge Diebold's acquisitions of the assets of the Herring-Hall-Marvin Safe Company ("HHM"). The District Court entered summary judgment against the government after finding that "HHM was hopelessly insolvent and faced with immediate receivership" and that "Diebold was the only bona fide prospective purchaser for HHM's business." On direct appeal, the Supreme Court overturned the lower court's decision, holding that the permissibility of contrary inferences to those drawn by the District Court made summary judgment inappropriate.

The First Circuit cited *Diebold* in *Rogen* v. *Ilikon Corp.*, 361 F.2d 260, 266-67 (1st Cir. 1966) when it held that, if it was possible that a trier of fact could answer "yes" to various

questions about the evidence, and also possible that a trier of fact could answer "no" to these same questions, then summary judgment was in error. In *Rogen*, a stockholder sued a corporation and others for securities violations. The stockholder alleged that the defendants had concealed material facts in connection with the sale of stock. The court held that the evidence raised issues of fact as to the corporation's nondisclosures to the stockholder, thereby precluding summary judgment. The court ruled that:

> The standard of review is a rigorous one and not even one chink in the armor of decision can be vulnerable to the question: Taking the facts and inferences most favorable to the losing party, would a trier of fact nevertheless have to find against him?

Id. at 266.

The facts of *Adickes* clarify the Supreme Court's application of the *Diebold* holding. In *Adickes*, a white teacher was arrested on vagrancy grounds after leaving a restaurant where she was refused service because she was accompanied by six female black students. She sued under 42 U.S.C. § 1983 claiming that the police and restaurant owner had conspired to violate her right to equal protection. The teacher produced the testimony of two students who claimed to have seen in the restaurant one of the policemen who later arrested Ms. Adickes. Even though S.H. Kress & Co. ("Kress") produced statements of the waitresses,[3] deposition testimony of the restaurant manager and affidavits of the chief of police and the two arresting officers that there had been no contact between any restaurant employee and the police, the Court held that Kress's failure

[3] The court noted that the statements of both waitresses were unsworn and that one of these statements was provided only to the Supreme Court and had not been provided to the lower court.

to show that there was no policeman in the restaurant required a denial of summary judgment. Even with strong evidence to the contrary, the Court held that "it would be open to a jury in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a "meeting of the minds" and thus reached an understanding that Petitioner should be refused service." *Id.* at 158.[4]

Diebold and *Adickes* demonstrate that, where inferences contrary to those found by a lower court are permissible,[5] the granting of summary judgment is erroneous. The trial court must ask whether a jury could answer "yes" or could answer "no" to various questions about the evidence. If either answer is possible, then the court must allow the case to proceed.[6] Even where the facts seem to weigh against the non-moving party, as they did in *Adickes*, it is erroneous to grant summary judgment if an inference from those facts leaves open the possibility that a jury could find for that party.

In the present case, the First Circuit failed to consider all possible inferences from the available facts.[7] The facts, in their

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[4] The Supreme Court's ruling in *Adickes* was recently upheld in *Celotex Corp.* v. *Catrett*, 106 S. Ct. 2548, 2554 (1986). In *Celotex*, the court noted that "on the basis of the showing before the Court in *Adickes*, the motion for summary judgment in that case should have been denied."

[5] The term "permissible" is not intended to have any limiting effect. The Supreme Court has on occasion replaced the word "permissible" with "legitimate". *Anderson*, 106 S. Ct. at 2513; *Adickes*, 398 U.S. at 158-59. The Eighth Circuit held that "a plaintiff should be accorded *any and all* favorable inferences," *McSpadden* v. *Mullins*, 456 F.2d 428, 430 (8th Cir. 1972) (emphasis added), and Wright & Miller summarized the available case law as stating that a party must be given "the benefit of *all* favorable inferences that can be drawn from (the evidence)." 10A Wright & Miller, Federal Practice and Procedure § 2727 at 125 (emphasis added).

[6] "It is one thing for a trier of fact to say "no" and another thing to say that a trier of fact could not say "yes"." *Rogen*, 361 F.2d at 267.

[7] The First Circuit recognized that "the threats made between 1970 and 1972 might otherwise suffice to establish duress against the filing of a law-

most simple form, are that: Pahlavi and her representatives made numerous threats on the lives of Palandjian and his family between 1970 and 1972.[8] After that time, Palandjian met on occasion with Pahlavi but did not file suit.

One possible inference from these facts is that, as Palandjian has averred, he continued to fear retaliation if he commenced litigation.[9] Certainly he had grounds for such fear. Pahlavi never revoked her threats. She never told Palandjian that he should come back to Iran and he never did. Although he spoke to her by phone and periodically met with her, she never paid him for his construction work or for his investment (Pal. Aff. II, para. 22; App. C, 13a; para. 23; App. C, 13a-14a). Her power to control his economic situation was made clear by her repeated promises to pay him and her failure to keep those promises. Her capacity to control his, and his family's, physical well-being had earlier been made equally as clear. Not until the source of her power, her brother the Shah, died in 1980, did Paladjian' fear of filing suit begin to dissipate.

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suit." (Op.; App. Q, 99a.) However, the court found that in light of Palandjian's continued dealings with Pahlavi, Palandjian could not claim continued duress (Op.; App. Q, 99a, 100a).

[8] Pahlavi threatened Palandjian with death if he returned to Iran (Pal. Aff. II, para. 16; App. C, 12a). Sanatizadeh, her newly named President of Abadani Jazayer, was verbally abusive and threatening to his staff and to Grigor (Naz. Dep.; App. E, 20a-21a). Her personal assistant, Izadi, demanded Pahlavi's shares from Grigor, telling him "we will have you killed." (Grigor Palandjian Deposition dated September 13, 1984 (hereinafter "Grigor Dep."); App. F, 24a, 25a). And Pahlavi's cousin, Dadsetan, warned Palandjian that if he did not return Cessna Aircraft to Pahlavi "something unpleasant" might happen to his parents (Pal. Aff. I, para. 17; App. B, 6a, 7a; Pal. Aff. II, para. 21; App. C, 13a).

[9] Palandjian claims in his affidavits to have feared Pahlavi's threats. Such fear is substantiated by Palandjian's failure to return to Iran, his advising the staff at Abadani Jazayer to hand power over to Sanatizadeh, his telling his father to turn Pahlavi's share over to Izadi, and his signing of the papers which turned over the Cessna distributorship to Dadsetan (Pal. Aff. I, para. 17; App. B, 6a, 7a; Pal. Aff. II, paras. 17, 20, 21; App. C, 12a, 13a).

A second possible inference from Palandjian's failure to file suit is that he saw a difference between filing suit and meeting with Pahlavi. By filing suit, he could anger Pahlavi by bringing her to court, by bringing their dispute into the public eye and by entering into an adversarial role with her. Whereas, by merely requesting the money, even with a lawyer present, Palandjian could avoid her wrath by simply pleading with her, meeting with her on neutral territory and by keeping the controversy private.

A legally impermissible inference from these facts is the inference drawn by the First Circuit. The First Circuit found that "there is nothing in the record to show (that) (Pahlavi) would have reacted differently to the formality of filing a lawsuit than she did to (Palandjian's) demands for payment, including one made while he was accompanied by a lawyer." (Op.; App. Q, 99a.) This inference is impermissible as it does not view the facts in the light most favorable to the opposing party. Moreover, it is not relevant to determining whether Palandjian continued to feel influenced by duress. Under a subjective standard for evaluating duress, Palandjian's, not Pahlavi's, state of mind is at issue. While an inference which indicates Pahlavi's state of mind may aid in assessing the credibility of Palandjian's claim of duress and the range of permissible inferences that a jury may draw therefrom,[10] it does not justify the entry of summary judgment. A jury must still weigh Palandjian's credibility and ascertain which inferences to draw from his testimony. As long as the possibility remains that a jury could find in favor of Palandjian's claim of duress, summary judgment must be denied. Unfavorable, irrelevant inferences may not be used to obviate the jury's role. *Diebold*, 369 U.S. at 655.

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[10] *See Matsushita*, 106 S. Ct. at 1361.

Certainly a jury could infer from Palandjian's actions that Palandjian, with his $30 million pending claim, would have filed suit had he not been under a continuing sense of fear and duress. As in *Diebold* and *Adickes*, where inferences contrary to those found by the trial court are permissible, summary judgment should not be allowed — where there is one "chink in the armor of decision," a plaintiff must not be effectively deprived of his right to have his factual dispute resolved by a jury.[11]

B. *Summary Judgment is Erroneous Where Credibility Or State of Mind Are At Issue.*

The First Circuit erred by failing to recognize that it is "reasonable to draw conflicting inferences . . . especially where the surrounding facts cast light upon the state of mind of (an individual)." *Empire Electronics Co.* v. *United States*, 311 F.2d 175, 179-180 (2d Cir. 1962). Summary judgment is generally erroneous in state of mind cases since "a determination of someone's state of mind usually entails the drawing of factual inferences as to which reasonable men might differ." 10A Wright & Miller, Federal Practice and Procedure, § 2730 at 238. As "[m]uch depends on the credibility of witnesses testifying as to their own state of mind, . . . the jury should be given an opportunity to observe the demeanor, during direct and cross-examination, of the witnesses whose states of mind are at issue." *Croley* v. *Matson Marigation Co.*, 634 F.2d 73, 77 (5th Cir. 1970), *cited in* 10A Wright & Miller, Federal Practice and Procedure, § 2730 at 237.[12]

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[11] *See Bill Johnson's Restaurants, Inc.* v. *National Labor Relations Board*, 461 U.S. 731, 747 n.12 (1983).

[12] The Advisory Committee Note to the 1963 Amendments to Rule 56(e) states that "where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate."

The Supreme Court expressed its agreement with these general principles in *Harlow* v. *Fitzgerald*, 457 U.S. 800, 816 (1982) (establishing a qualified immunity and an objective good faith test for determining whether government executives had abused their discretion in terminating employees). The Court noted that "the judgments surrounding discretionary action almost inevitably are influenced by the decision maker's experiences, values and emotions. These variables explain in part why questions of subjective intent so rarely can be decided by summary judgment." *Id.*

The Supreme Court had previously addressed this issue in *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962),[13] (denying summary judgment to CBS and others against the owner of an ultra-high frequency, ("UHF") televi-

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[13] *Poller* was recently upheld in *Anderson*, 106 S. Ct. at 2514. The Supreme Court explained that "we do not understand *Poller* to hold that a plaintiff may defeat a defendant's properly supported motion for summary judgment in a conspiracy or libel case, for example, without offering any concrete evidence from which a reasonable jury could return a verdict in his favor. . . . Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleadings, but must set forth specific facts (i.e. present affirmative evidence) showing that there is a genuine issue for trial. . . . We repeat, however, that the plaintiff, to survive the defendant's motion, need only present evidence from which a jury might return a verdict in his favor. If he does so, there is a genuine issue of fact that requires a trial." *Id.* at 2514-2515.

Palandjian has not rested upon the mere allegations of his pleadings here. Instead, he has provided "affirmative evidence," by way of documents, affidavits and deposition testimony, which relate the threats leading to his sense of duress. (Pahlavi's letter, Sanatizadeh's visit to Grigor at Abadani Jazayer, Izadi's visit to Grigor to obtain possession of the shares and Dadsetan's insistence upon Palandjian's relinquishing of the Cessna distributorship.) Moreover, his affidavit explains that his failure to file suit was due to a sense of duress which continued until after the death of Pahlavi's brother, the Shah, and until Palandjian came to believe that the Pahlavi family would not return to power in Iran. This evidence is "sufficient" to "require a judge or jury to resolve the parties differing versions of the truth at trial." *First National Bank of Arizona* v. *Cities Service Co.*, 391 U.S. 253, 288-289 (1968).

sion station which brought an antitrust suit claiming an alleged conspiracy to eliminate the station from the broadcast field and to destroy ultra high frequency broadcasting). The Court commented that:

> We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross examination that their credibility and the weight to be given to their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of "even handed justice."

Id. at 473.

Harlow and *Poller* indicate the Supreme Court's accord with the generally held view that where a trial court is required to make subjective determinations, the court should be reticent to grant summary judgment. Subjective determinations pivot on the inferences which may be drawn from an individual's testimony, which inferences depend upon that individual's credibility. As assessing credibility is exclusively a jury function, the court should not step in to obviate their role.

Like the discretion in *Harlow* and the intent in *Poller*, duress, according to the First Circuit and other circuit and state courts, is determined by a subjective standard (Op.; App. Q, 97a). It therefore, should rarely be precluded by summary judgment. "Where the claimant's affidavit in opposition to defendant's motion for summary judgment sets forth facts that would be admissible in evidence in support of the claim of duress, the defendant's motion should not be granted." 6 Moore's Federal Practice, ¶ 56.17[20] at 56-850. In *Holzman* v. *Barrett*, 192 F.2d 113 (7th Cir. 1951), the Court held that:

> Duress is characterized by the effect which it has upon the mind of the person upon whom it is imposed. . . . And like intent with which an act is committed, we suppose a court would allow considerable latitude in the examination of a witness claiming to have acted under duress. . . . "Whether such duress exists as to a particular transaction is a matter of fact."[14]

Id. at 117. Similarly, in *McNeil* v. *Lovelace,* 529 S.W.2d 633 (Tex. Civ. App. 1975), the court held that "the testimony contained in plaintiff's summary judgment affidavit concerning continuing duress and coercion raised a fact issue on the question of the tolling of the statute of limitations and thus prohibited the granting of summary judgment." *Id.* at 639.

The First Circuit erred in failing to follow Supreme Court precedent concerning subjective assessments on summary judgment. Where subjectivity is a factor, experiences, values and emotions of an individual are brought into play. Thus, the individual's testimony and credibility are crucial to assessing his subjective concerns. Determinations of Palandjian's credibility and of the inferences to be drawn from his testimony are issues properly left to the jury as the ultimate trier of fact. The jury must decide whether it believes that the duress Palandjian experienced between 1970 and 1972 continued to affect his will and ability to bring suit until 1983 (Pal Aff. II, par. 25; App. C, 14a). In such circumstances, summary judgment must be denied.

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[14] Although in *Holzman,* duress was an element of the underlying cause of action, that fact is not relevant here. *Holzman* is not cited here to show that duress tolls the statute of limitations (a principle recognized by the First Circuit). Instead, it is cited to demonstrate that summary judgment is rarely appropriate where allegations of duress are at issue. *See also First National Bank of Cincinatti* v. *Pepper,* 454 F.2d 626 (2d Cir. 1972).

Conclusion.

The Supreme Court should not let stand a decision which directly conflicts with its holdings in summary judgment cases. Where a subjective consideration is at issue, summary judgment is erroneous, since reasonable men may draw conflicting inferences from the testimony presented. Where, as here, the First Circuit has not considered the possibility of conflicting inferences nor viewed the factual inferences in a light most favorable to the party opposing the motion, this Court should issue a writ of certiorari to review the judgment and order of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

MATTHEW BROWN
M. FREDERICK PRITZKER
ELIZABETH A. RITVO
JOHN J. WELTMAN
BROWN, RUDNICK, FREED & GESMER
One Federal Street,
Boston, Massachusetts 02110.
(617) 542-3000
Attorneys for Petitioner

No. 86-1450

In the
Supreme Court of the United States.

OCTOBER TERM, 1986.

PETROS A. PALANDJIAN,
PETITIONER,

v.

ASHRAF PAHLAVI,
RESPONDENT.

Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

MATTHEW BROWN
M. FREDERICK PRITZKER
ELIZABETH A. RITVO
JOHN J. WELTMAN
BROWN, RUDNICK, FREED & GESMER
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Attorneys for Petitioner

BATEMAN & SLADE, INC BOSTON, MASSACHUSETTS

Table of Contents.

Appendix A.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying

the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading; but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount

of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Appendix B.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff

v.

ASHRAF PAHLAVI
Defendant

AFFIDAVIT OF PETROS A. PALANDJIAN IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

C.A. No. 83-2199-C

I, Petros A. Palandjian, being first duly sworn, do hereby state and depose:

1. I reside at 22 Wellesley Road, Belmont, Massachusetts.

2. I was born in Iran and in 1966 was a dual national American/Iranian citizen in 1966. In 1966, I was the president of a construction company then located at 56 North Beacon Street, Watertown, Massachusetts.

3. My brother Leon Palandjian and my parents resided in Tehran, Iran in 1966. My father, Grigor Palandjian, owned Yekan Construction Co., Inc. a construction company with its offices in Tehran, Iran.

4. In June 1966, I first met with the Defendant, Ashraf Pahlavi. We had several meetings at my office in Watertown, Massachusetts and at my home in Belmont, Massachusetts. Ms. Pahlavi also visited the current construction projects of my company.

5. At these meetings, Ms. Pahlavi discussed with me Iran's need for trained people such as myself who had extensive experience in the development and construction of large real estate projects.

6. During the course of these meetings in Massachusetts, Ms. Pahlavi and I entered into a contract whereby we agreed to develop into a holiday resort certain property located on the Caspian Sea ("the Property") in Iran. The development was ultimately known as Kazar Shahr.

7. The terms of the oral contract between Ms. Pahlavi and myself were as follows:

(a) Ms. Pahlavi was to purchase the property at an estimated cost of two million ($2,000,000.00) dollars.

(b) I was to invest up to two million ($2,000,000) dollars in time, equipment, and personnel;

(c) My brother Leon and I were to form a company for the purpose of developing and constructing the Caspian Sea project;

(d) I agreed that the markup on the construction work performed on the project would be calculated based on costs plus 15%;

(e) If more than four million ($4,000,000.00) dollars were needed to fund the project, Ms. Pahlavi agreed to borrow funds from a bank up to the amount of five hundred thousand ($500,000.00) dollars;

(f) As lots in the development were sold, any funds borrowed from a bank would be paid first;

(g) After any bank debt had been paid, Ms. Pahlavi and I would each be paid for our initial investments, on a proportional basis, out of any sales generated;

(h) After the payment out of all the above-described amounts, Ms. Pahlavi and I would split any profits on a 50-50 basis;

(i) I agreed to oversee the development of the Caspian Sea project from my business office in Watertown, Massachusetts; I also agreed to visit the project site in Iran when such visits were necessary.

8. My brother and I thereafter formed a company named Abadani Jazayer. Following the formation of this company, Ms. Pahlavi arranged for title to one million square meters of ocean front property on the Caspian Sea in Babolsar, Iran to be transferred to Abadani Jazayer.

9. My brother became the President of Abadani Jazayer; my brother and father, both residents in Iran, had signature rights for the company and held 100% of the shares in bearer form on the following basis: 50% for myself and 50% for the benefit of Ms. Pahlavi.

10. In June 1966, during the meetings held in Massachusetts, and described above in paragraph 4, my family and I discussed with Ms. Pahlavi obtaining the rights to an exclusive distributorship of Cessna Aircraft in Iran. Subsequently, my family obtained the Cessna distributorship in the name of Hooraseman Corp. Ms. Pahlavi had a 15% interest in this distributorship.

11. Construction on the Caspian Sea project, known as Kazar Shahr, began in approximately 1968.

12. From 1966 through July, 1969, I supervised the construction and development of Kazar Shahr, both visiting the site and performing work at my Watertown office.

13. In 1970, the Kazar Shahr project was ready for marketing.

14. From 1966-1971, I received numerous telephone calls from Ms. Pahlavi at my home in Belmont and my office in Watertown. In these calls, we discussed the Kazar Shahr project and the work I was performing on the project.

15. Architect Peter Dimeo performed work on the Kazar Shahr project, at my direction, at his office in Stoneham, Massachusetts.

16. On information and belief, in late 1970 or early 1971, Ms. Pahlavi appointed her cousin Shahrair Dadsetan to run the Cessna distributorship owned by Hooraseman.

17. In 1971, I was visited at my lawyer's office in Watertown, Massachusetts by the Mr. Dadsetan, Ms. Pahlavi's cousin. Dadsetan, acting on behalf of Ms. Pahlavi, stated that Ms. Pahlavi wanted the Cessna distributorship for her son Shahram Pahlavi and that, if I did not release his rights to the

Cessna distributorship, "The Princess would be very upset". Fearing the threat expressed to me by Mr. Dadsetan, I signed papers provided by Dadsetan which effectively turned over my rights to Cessna distributorship held by Hooraseman. I signed these papers in Watertown, Massachusetts.

18. In 1972, I received a telephone call at my Belmont home from Ms. Pahlavi wherein she strongly suggested to me that my father agree to sell the Hooraseman office building to her. On information and belief, my father, Grigor Palandjian, who had also been visited by Ms. Pahlavi's representative concerning the sale of the Hooraseman building, subsequently signed over title to the Hooraseman office building to Ms. Pahlavi's agents. He never received payment from the Ms. Pahlavi for said building.

19. I was never paid by Ms. Pahlavi for any of the monies due and owing to me from the Kazar Shahr project, for my interest in Hooraseman, the holder of the Cessna Aircraft distributorship, and for the value of the Hooraseman building.

20. On August 22, 1983, my father Grigor Palandjian assigned to me all his claims against Ms. Pahlavi or her agents, employees, servants, representatives, assignees or transferees. A copy of said Assignment to me is here attached as Exhibit "A".

21. On information and belief, Ms. Pahlavi has two residences in New York: one in 625 Park Avenue and one at 29 Beekman Place. When she visits New York, which she does on a regular basis, she resides at either of these residences; Ms. Pahlavi also conducts business from 29 Beekman Place. Since the mid-1970s, I have visited Ms. Pahlavi numerous times at both of these dwellings in New York.

Signed under the pains and penalties of perjury.

/s/Petros A. Palandjian
Petros A. Palandjian

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. November 30, 1983

Then appeared before me the aforesaid Petros A. Palandjian who swore that the above statements are true to the best of his belief and that his execution of this Affidavit is his free act and deed.

/s/Kenneth A. Korb
Notary Public Kenneth A. Korb

My Commission Expires: 12/20/85

20,74(62)

CERTIFICATE OF SERVICE

I, Elizabeth A. Ritvo, hereby certify that I have this day served a copy of the within Affidavit of Petros A. Palandjian in Opposition to Defendant's Motion to Dismiss by hand delivery to Harvey Weiner, Esq., Peabody & Arnold, One Beacon Street, Boston, MA 02108.

/s/Elizabeth A. Ritvo
Elizabeth A. Ritvo

Dated: November 30, 1983

EXHIBIT "A"

AGREEMENT OF ASSIGNMENT

AGREEMENT OF ASSIGNMENT made at 38 Wellesley Rd, Belmont, Massachusetts this 22 day of August, 1983 by and between GRIGOR PALANDJIAN, Assignor, and PETROS PALANDJIAN, Assignee.

It is understood and agreed that the Assignor, for one ($1.00) dollar and for other valuable consideration, receipt of which is hereby acknowledged, had assigned and transferred to the Assignee all claims and rights which the Assignor now has or ever has had against Princess Ashraf Pahlavi or her agents, employees, servants, representatives, assignees or transferees.

Witness:

/s/_____ _____

Notary Public Grigor Palandjian, Assignor

Seal: G.Palandjian

Witness:

/s/_____ /s/_____

Notary Public Petros Palandjian, Assignee

Appendix C.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff

v.

ASHRAF PAHLAVI
Defendant

AFFIDAVIT OF PLAINTIFF PETROS PALANDJIAN IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Civil Action No. 83-2199-C

I, Petros A. Palandjian, being first duly sworn, do hereby state and depose:

1). I reside at 22 Wellesley Road, Belmont, Massachusetts.

2). I am a dual national Iranian/American citizen and have resided in the United States since 1963. My parents lived in Tehran, Iran until their departure for the United States in 1978. Members of my family still live in Iran.

3) Until 1976, the Palandjian family operated Yekan Construction, one of the largest construction companies in Iran.

4) Immediately following the June 1966 visit of the Defendant and my brother Leon Palandjian (hereinafter "Leon") to my home in Belmont, Massachusetts, as described in paragraphs 4-7 and 10 of my Affidavit dated November 30, 1983, I travelled to Tehran, Iran with Leon and the Defendant Ashraf Pahlavi (hereinafter "Pahlavi"). While in Iran, I obtained additional information on the Kazar Shahr development.

5) It was my understanding and belief that Pahlavi wanted me, rather than Leon, to be her partner in Kazar Shahr and Cessna so that Leon would have more time to attend to Pahlavi's other business affairs and travels.

6) I did not ask or insist that Pahlavi enter into a written agreement with me concerning Kazar Shahr and Cessna because I feared the request would insult and offend Pahlavi as a member of Iran's royal family.

7) In 1967 or 1968, Leon and I were appointed individually as Cessan Aircraft's exclusive representatives in Iran. We together caused the formation of Hooraseman (also known as "Sky Hoor") to operate the Cessna distributorship. From 1966-1970, I incurred debts exceeding $300,000 to build a hangar and offices for Hooraseman.

8) Leon was named President of both Abadani Jazayer and Hooraseman because he was more often resident in Iran that I was.

9) From 1967 or 1968 to 1971, my father Grigor Palandjian (hereinafter "Grigor") had possession of the Hooraseman shares in his safe in Tehran, Iran in addition to the Abadani Jazayer shares described in paragraph 9 of my Affidavit of November 30, 1984.

10) In July 1969, Leon died in an airplane crash in Iran.

11) Following Leon's death, Pahlavi asked me to assume the title of President of Abadani Jazayer and Hooraseman and to move to Tehran to supervise the operations of both companies. I move to Iran in September 1969 and remained there, with the exception of several visits to the United States, until late December 1970. During this time, I spoke with Pahlavi on almost a dairly basis.

12) During 1969-1970, Pahlavi's secretary Nora frequently visited the Abadani Jazayer office to keep apprised of the developments. It was my understanding that Nora reported to Pahlavi on the progress of the development.

13) Appended as Attachment "A" is a letter I received from Nora and a translation of the letter. Said letter in part describes the on-going work of Abadani Jazayer.

14) The cost of the construction work which I had performed at Kazar Shahr until February 1971 was valued at $1.7 million.

15) In December of 1970, I had a dispute with Pahlavi concerning, among other things, the amount of time I spent in Iran. Also, I informed Pahlavi of two offers to buy Abadani Jazayer which I had received, one for $10 million and one for $16 million and of an offer to purchase Hooraseman for $1 million. This dispute and subsequent discussion took place over several days.

16) My suggestion to Pahlavi that we sell Abadani Jazayer and Hooraseman angered her. When this topic was discussed with Pahlavi in Juan les Pins, France, I received a writing from Pahlavi directing me "never to set foot in Iran as long as Pahlavi was alive. Appended as Attachment "B" is a copy of said writing and a translation.

17) Following the dispute with Pahlavi described above in paragraphs 15 and 16 and my receipt of Pahlavi's writing described above in paragraph 16, I did not return to Iran as I feared for my safety if I did so. I then returned to my home in Belmont, Massachusetts and continued my supervision of the Abadani Jazayer and Hooraseman activities from there.

18) In early 1971, I learned that Pahlavi wanted to gain possession of the Abadani Jazayer and Hooraseman shares being held by my father in Tehran. I received a telephone call to my house in Belmont, Massachusetts from my father. He said that Izadi, Pahlavi's top assistant, had visited him, demanding the shares and threatening him. I told my father not to do anything until I spoke with Pahlavi.

19) I spoke with Pahlavi at least twice about her intent to gain possession of the shares. Pahlavi stated to me that, as I had held the shares for her, she would now hold the shares for me.

20) Not wanting any harm to come to my father and relying on Pahlavi's statement that she would hold the Abadani Jazayer

and Hooraseman shares for my benefit, I advised my father to relinquish the shares to Izadi which he did.

21) Also in 1971, I was visited at my home in Belmont and my office in Watertown by Dadsetan, Pahlavi's cousin. As set forth in paragraph 17 of my November 30, 1983 affidavit and in supplementation thereof, Dadsetan told me that I either had to return to Iran at Pahlavi's request or I had to relinquish my rights to the Cessna distributorship. I still feared Pahlavi's previous threats and was unwilling to agree to return to Iran. Dadsetan became more belligerent, stating "She wants Cessna Aircraft. She wants you to give up Cessna if you're not coming back" and "I'm sure you won't want to take a chance and have something unpleasant happen to your mom, to your dad. They have a pleasant life". I called Pahlavi to determine why Dadsetan had come to Massachusetts to threaten me. Pahlavi said that Dadsetan was her representative and that Palandjian was to do what he said, adding "You don't have to if you don't want to. That's up to you. You decide". Pahlavi also said "Don't worry about the money. You will get paid." Following this conversation and also discussions with my lawyer Robert Mardirosian, I signed papers which relinquished my rights to the Cessna distributorship. I signed these papers out of fear of the consequences to me and my family if I did not do as Pahlavi directed.

22) From 1971 through 1982, I remained in contact with Pahlavi, speaking with her by phone and periodically meeting with her in Geneva and New York. During these calls and meetings, I raised the issue of the monies she owed me from Hooraseman and Abadani Jazayer; she acknowledged her debts to me and said I would be paid.

23) In 1972, I met Pahlavi in Geneva. I again asked her for payment. Pahlavi stated she had instructed Izadi to pay me $1.7 million for the unpaid construction work I performed for the Kazar Shahr development and I told her I had not received

any payment from Izadi. To convince me of my error in recommending the sale referred to in paragraph 15, she told me that the Kazar Shahr project had already made $25 million and would make in excess of $50 million. She assured me I would be paid for my construction costs and my share of the profits.

24) The Shah of Iran was deposed in 1978. He died in 1980.

25) Like many other Iranians residing outside Iran, I believed that the Shah's family would return to power eventually and that the royal family through its agents would exercise power and control while out of power and outside of Iran. In 1983, I came to believe that the Pahlavis would not be returned to their former power in Iran and that I could safely commence litigation of my claims against Pahlavi.

26) In response to Pahlavi's Requests for Documents, I have produced to her counsel several hundred documents, including the distributorship agreements between Cessna Aircraft and myself, receipts indicating the transfer of the Hooraseman and Abadani Jazayer shares from my father to Pahlavi's agent, corporate documents naming me as president of Abadani Jazayer and extensive itemizations, made in 1971, of construction work which had been completed on the Kazar Shahr project.

Signed under the pains and penalties of perjury.

_____

Petros A. Palandjian

STATE OF FLORIDA

_____, ss. December ____, 1984

The above-named Petros A. Palandjian appeared before me and affirmed that the aforesaid is his free act and deed and that the facts set forth in this affidavit are true to the best of his knowledge, information and belief.

Notary Public
My Commission Expires:

20,74(9)

Appendix D.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN

VS.

NO. 93-2199-C

ASHRAF PAHLAVI

DEPOSITION OF GRIGOR NAZARIAN, taken pursuant to Notice under the Federal Rules of Civil Procedure, before IRMA WIDOMSKI, a Notary Public and Registered Professional Reporter, in and for the Commonwealth of Massachusetts, at the Offices of Peabody & Arnold, 1 Beacon Street, Boston, Massachusetts, commencing at 11:15 a.m., Friday, November 2, 1984.

APPEARANCES:

Brown, Rudnick, Freed & Gesmer
M. Frederick Pritzker, Esq.
One Federal Street
Boston, MA. 02110
For the plaintiff;

Q. When did you last do work on that project?
A. Till then.
Q. That is the beginning of 1971?
A. Yes.
Q. In the beginning of 1971, what had been done on the project?
A. Most of the site work was done.
Q. By site work, what are you referring to?
A. Earth work, sewers, and lighting, electricity,. Even the poles.
Q. Were the roads in?
A. Water. Yes. I finished that. The water then the roads, even all the base course of the asphalt was there.

Now even I remember the central street, which was the widest street and all that square which was in the middle of the town was finally asphalt. It had finished course.
Q. Were any of the houses built at that time?
A. No.
Q. Why did you stop work on the project in the beginning of 1971?
A. Because Mr. Sanatizadeh who was introducing

. . . . . .

Q. I am interested in who paid you?
A. Yekan Construction Company.
Q. Only Yekan Construction Company?
A. As I remember it.
Q. During the 15 months, what was your title during this 15 months relative to the project?
A. I was the project manager, the head of the design office.

May I add something?
Q. Sure.
A. When you said you finished, how much it was finished, I forgot to mention that water towers, reservoirs and the wells

and even all the trees. Most of the trees were installed on the site.

Q. The trees?

A. Trees.

Q. Landscaping?

A. Landscaping. Because it was an important factor who was going to keep the trees alive and so on.

Q. Did you have anything to do with the financial arrangements for the work that was being done?

A. Sometimes, Yekan Company was discussing that

. . . . . .

Appendix E.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN

VS.

NO. 93-2199-C

ASHRAF PAHLAVI

DEPOSITION OF GRIGOR NAZARIAN, taken pursuant to Notice under the Federal Rules of Civil Procedure, before IRMA WIDOMSKI, a Notary Public and Registered Professional Reporter, in and for the Commonwealth of Massachusetts, at the Offices of Peabody & Arnold, 1 Beacon Street, Boston, Massachusetts, commencing at 11:15 a.m., Friday, November 2, 1984.

APPEARANCES:

Brown, Rudnick, Freed & Gesmer
M. Frederick Pritzker, Esq.
One Federal Street
Boston, MA. 02110
For the plaintiff;

Q. When did you last do work on that project?
A. Till then.
Q. That is the beginning of 1971?
A. Yes.
Q. In the beginning of 1971, what had been done on the project?
A. Most of the site work was done.
Q. By site work, what are you referring to?
A. Earth work, sewers, and lighting, electricity,. Even the poles.
Q. Were the roads in?
A. Water. Yes. I finished that. The water then the roads, even all the base course of the asphalt was there.

Now even I remember the central street, which was the widest street and all that square which was in the middle of the town was finally asphalt. It had finished course.
Q. Were any of the houses built at that time?
A. No.
Q. Why did you stop work on the project in the beginning of 1971?
A. Because Mr. Sanatizadeh who was introducing himself as the new manager, the new director of the project, he asked me to give him all the plans and all the information of what I had on documents.
Q. Did you do that?
A. In the beginning I said you can't ask me. You have to ask at least Grigor Palandjian, Bob's father.

Then I talked to Grigor Palandjian. I called Bob who was here. I told him what to do. He was threatening us.

Then Bob told me whatever they ask, you have to give them.
Q. Did he tell you why?
A. No. He said it's an order and do it. Because really, that, we should do that because it was an order. We had some kind of respect to the Shar's family, I say.

Q. What did you do?
A. I went to Mr. Sanatizadeh's office, I took all the plans, all the documents, all the models. I gave it to him. That was the end.
Q. Did you do any further work on the project thereafter?

. . . . . .

A. Yes.
Q. When you and Yekan no longer had anything to do with the project, Kazar Sharh?
A. Mm-hmm.
Q. How did you first hear that you and/or the Company would no longer be involved in the project?
A. It was my worst day, believe me, of my life when Mr. Sanatizadeh called me to his office and asked me to stop the project and bring over whatever I had.
Q. What was your understanding as to who he was?
A. Just I knew he is a representative from, in court, I didn't know that he his working for Ashraf because I knew his brother had some kind of involvement with Shah's family, the royal family. That was why I knew he is a representative from them. But I said I can do nothing. Just I am working and you have to discuss this matter with Bob Palandjian or his father.
Q. What did Mr. Sanatizadeh say to you?
A. He was threatening me. He was asking me, you have to bring it over. This is an order which I am personally giving you. You have to obey.
Q. Did you bring it over?
A. No. I went back to the office and I talked to Mr. Grigor Palandjian and later I called Bob here.
Q. When you say Bob here, you mean Bob in the United States?
A. Yes. He told me you do whatever you can. You can't, what you call it? You can't oppose them. You can't keep the project. If they want, you have to give them.

Q. What else did he say?
A. Nothing. Really I was very embarrassed and very unhappy. I was embarrassed and unhappy. And he said you can start other projects which we have. I like still work with you.
Q. What did you and Grigor Palandjian say relative to this matter?
A. Just I asked what to do. And in the beginning he said no, he was not really happy of that condition. Then when I talked to Bob, I went to back to him, he agreed.
Q. What did you then do?

Appendix F.

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Exhibits 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff
vs. DOCKET NO. 83-2199-C
ASHRAF PAHLAVI,
Defendant

DEPOSITION OF GRIGOR PALANDJIAN, through Interpreter, Enoch Lachinian, before Caroline T. Renault, Notary Public and Certified Shorthand Reporter, pursuant to the Federal Rules of Civil Procedure, held at the offices of Peabody & Arnold, One Beacon Street, Boston, Massachusetts, on Thursday, September 13, 1984, commencing at 10:30 a.m.

APPEARANCES:

Brown, Rudnick, Freed & Gesmer (By M. Frederick Pritzker, Esq. and Elizabeth A. Ritvo, Atty.), One Federal Street, Boston, Massachusetts, for the Plaintiff.

Peabody & Arnold (By Harvey Weiner, Esq.), One Beacon Street, Boston, Massachusetts, for the Defendant.

Milbank, Tweed, Hadley & McCloy (By William E. Jackson, Esq.), 1 Chase Manhattan Plaza, New York, N.Y. 10005, for the Defendant.

ALSO PRESENT: Petros Palandjian and Ellen Loeb, Atty.

MR. PRITZKER: Tell him to please answer the question. Listen to the question.

Q. I would like you to translate what he said first and then tell him what Mr. Pritzker said.

A. Your question is what did he say?

Q. He was saying something when Mr. Pritzker interrupted, and what I would like is the translation of what he was saying and then a translation of what Mr. Pritzker said.

A. Let me translate up to that point. He delayed, procrastinated, and — okay. He wanted to delay and Izzadi insisted and threatened him saying that, "Don't you want to live here," and he threatened his life, whereupon he called his son, telephoned his son.

Q. Now, do you have a memory of this conversation?

A. Well, that's what I said. He came to me and that's — as I said, he came to me and those were his statements that had — that would have an effect on anyone.

Q. Do you know what year this was?

A. These last years, last few years, I

. . . . . .

A. "Don't you want to live in this country?"

Q. Those are the first words he said to you?

A. Yes. When I explained it, I had no involvement in that, it was my son's thing, not my thing, it was thereafter that he threatened my life and said that, "We will have you killed."

Q. Did Mr. Izzadi have an appointment with you?

A. They don't need an appointment. All — they come and break down the door and come in.

Q. Did he have an appointment with you?

A. As I said, when they come, they can come.

MR. PRITZKER: Would you tell him to answer the question that is asked?

A. I don't recall about the appointment. He knew that I was always there.

Q. But you don't recall whether or not he had an appointment?

A. It may be that he had called and came.

Q. Now, what was the first thing that you recall that he said to you? Did he say "hello"?

Q. Was he there longer than five minutes?

A. Five, maybe. I don't recall the minutes.

Q. Well, was it more than an hour?

A. No, no, it certainly was not. For that purpose you don't need hours. It was a very official visit. He came and went. He came and left.

Q. What were his exact words?

A. I just told you.

Q. Well, I appreciate if you would tell me again.

A. He said he came and he said, "Give me the Abadani Jazayer stocks," and I asked him, "Why should I give them to you?"

Q. And?

A. And I said, "Those belong to Petros, and he gave them to me."

Q. And did Mr. Izzadi tell you why he wanted the shares of stock?

A. He just said, "Give me the stocks. That's all I want. If you and your son and family want to live here without any danger, give me the stocks."

Appendix G.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff
vs. Civil Action No. 83-2199-C
ASHRAF PAHLAVI,
Defendant

Washington, D. C.
Friday, October 26, 1984

Deposition of

RONALD KOVEN

a witness in the above-entitled matter, called for examination by counsel for the plaintiff, pursuant to notice, taken in the law offices of Milbank, Tweed, Hadley and McCloy, International Square, 1825 I Street, N.W., Washington, D.C., beginning at 5:35 p.m., before Karen Hinnenkamp, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

"She said it was her 'only revenue source' and that she had taken the profits to buy residential and industrial real estate in Europe. She said she had also held some stocks but had contributed them — $1 million worth — to the Ashraf Pahlavi Foundation to underwrite scholarships and book publishing."

Q Do these paragraphs which you have just read accurately describe the statements made by Ashraf Pahlavi in her interview with you?

MR. HALLE: Objection as to form.

BY MS. RITVO:

Q. You may answer the question.

A. I don't know what to do.

Q. That is just a lawyer's objection for the record. You can answer the question.

A. Yes.

Q. Did she state to you that her personal fortune was exclusively based on extensive lands she inherited from her father, Reza Shah, on the shore of the Caspian Sea in Iran?

A. Yes.

Q. Did she state to you that these lands were worth little when she got them but became extremely valuable after the oil-sparked real estate boom?

A. Yes.

Q. Did she state to you that her real estate and construction companies sold 1,400 vacation homes in her development in Kezer Char?

A. Yes.

Q. How did the topic of Kezer Char come up in your interview?

A. I believe she raised it.

Q. Was there any context that the Princess raised?

A. Yes. The context was to scoff at the reports of a fortune of incredible proportions and to try to, from her point of view, bring it down to a reasonable proportion and scale. It seemed to be an important point to her.

MR. HALLE: I object to the answer. It goes beyond the question.

MS. RITVO: I believe it was within the scope of the question. But that is an objection for the record, Mr. Koven.

THE WITNESS: Hey, I have nothing. I am not getting a thing out of this. Let's not —

BY MS. RITVO:

Q. Did she state to you that her development of Kezer Char was her only revenue source and that she had taken the profits to buy residential and industrial real estate in Europe?

A. Yes.

Q. After the article which has been marked Exhibit 1 appeared in the Globe, did you have any further contact with Ashraf Pahlavi?

A. Yes.

Q. What was that?

A. Of two kinds. One was that I was informed by her lawyer that there were people in her entourage who had objected —

MR. HALLE: I object to the answer. It goes beyond the question. It is not responsive to the question.

BY MS. RITVO:

Q. To satisfy Mr. Halle's objection —

A. I don't need this.

Q. — just yes or no, did you have any further contact with Ashraf Pahlavi after the article appeared in The Boston Globe?

A. Yes.

Princess Ashraf challenges CIA on corruption, immorality claims

By Ronald Koven
Special to The Globe

PARIS — Princess Ashraf, the late shah of Iran's tough-minded twin sister, has challenged the CIA to produce its evidence — if it has any — of the claims in its classified reports, now public, of her financial corruption and immorality.

The reports appeared in the 13 volumes of secret Tehran papers published by the Islamic students who took over the US Embassy: the material on Princess Ashraf was printed in the Jan. 31 edition of The Globe.

In an interview at her sumptuously decorated Paris apartment overlooking a small park, Iran's petite Dragon Lady, now 62, expressed her belief that the CIA had sided with Ayatollah Ruholah Khomeini against her late brother in an attempt to "Islamize" the countries of the region against Soviet-inspired communism.

"These reports show the CIA surely plotted against my brother," she said. "Before seeing them, I would never have thought so. But," she alleged, "the CIA made contact with Khomeini as early as 1977. The West thought that by Islamizing that whole region — Iran, Afghanistan, Pakistan — it would serve as a barrier against communism. They feared that if my brother stayed in power, the country would wind up going communist because so many people were being educated."

The CIA knows better than to accuse her of corruption, Ashraf said, because she refused a blank check from the US intelligence agency in 1952 to finance support activities for her brother's comeback after he was forced into exile by then Prime Minister Mohammed Mossadegh.

"I tore it up: I said, 'I'm not your agent,'" she recalled, even though her financial situation during that period of exile was "precarious" since Mossadegh had frozen her assets. She said she accepted US and British Intelligence proposals to work for her brother's return "because I wanted to end the Mossadegh dictatorship."

"The CIA," she said, "should know whether I was corrupt. If I were corrupt, I would have accepted their money."

She said she did not recall the names of the agents involved in the offer but there must be British and American intelligence officials of the time who can testify to its veracity.

"A woman with the reputation the CIA wants to give me," she said, "could never have attained the status I did," referring to her brother's appointment of her to head the Iranian delegation to the United Nations and her important positions in various UN women's and human right's commissions.

Friends of Ashraf say she has been deeply hurt by the CIA reports, which she was shown for the first time by The Globe a week ago.

Ashraf read the CIA reports with tight lips and then said, "I can't sue the CIA: They are too strong for me." Five days later, she called this reporter back in to say that "if the CIA has the proof, they should absolutely produce it. They surely don't have any."

What embitters her, the friends say, is that she was in close contact with CIA representatives over the years, and she assumed that they were friendly to her.

After all, the royal family had accepted a former director of the CIA, Richard Helms, as ambassador to Iran and was close to Kermit Roosevelt, who as a young CIA operative was instrumental in putting the Shah back on the throne in 1953.

The CIA described her as having "a greedy nature and nymphomaniac tendencies" and described her business activities as "verging on if not completely illegal." It accused her of in-

fluence-peddling: arranging major business or government advantages for each of her three husbands; covering up her son Shahram's questionable dealings, including the sale of Iranian national art treasures; and placing her younger lovers in high positions. One of the CIA reports speaks of "allegations" that she was involved in drug smuggling, adding that the evidence was "of course, scanty."

But, it said, "She has never hesitated to use her influence to obtain government contracts for her friends and acquaintances willing to pay her a fee." The reports accused her of having successfully intrigued against each of the shah's three wives and suggested, should the shah die unexpectedly, that she might be a rival for the throne.

Her personal fortune, Ashraf said, was exclusively based on extensive lands she inherited from her father, Reza Shah, on the shore of the Caspian Sea in northern Iran. They were worth little when she got them, she said, but became extremely valuable after the oil-sparked real-estate boom. She said her real estate and construction companies sold 1400 vacation homes in her development of Kezer Char.

She said it was her "only revenue source" and that she had taken the profits to buy residential and industrial real estate in Europe. She said she had also held some stocks but had contributed them — $1 million worth — to the Ashraf Pahlavi Foundation to underwrite scholarships and book publishing.

She now has, she said, "enough to live on, neither more nor less." Ashraf maintains staffed households in New York, Los Angeles, Paris and the French Riviera.

Compared to European royal families, she said, Iran's Pahlevi family members are "poor people. All those astronomical numbers that we're accused of stealing are pure lies. Such sums are not possible. How do you accumulate such money?"

The Islamic revolutionary government has evaluated the fortune of the shah's family abroad at $10 billion.

Ashraf said the only specific accusation against her was that she had transferred $700,000 to Europe, which she conceded was true. The money came from the Caspian development, she said.

She dismissed as "absurd" the "thousands" of stories that circulated in Tehran about her, such as the allegation that she had to be paid every time a trucking company made a shipment; that she held a monopoly on the sale of Kents, once the most popular cigarette in Iran; that she controlled the sale of heroin in the country.

If such stories had been true, she said, the current Iranian government would have produced the evidence.

Aside from denying the allegations about her personal life in general terms, she said she did not want to go into that. As for her relations with the shah's wives, she said. "All three of them are still alive, thank God. You should ask them what they think of me. Farah Dibah [the shah's widow] is still my sister-in-law and I love her very much. She is really a great friend."

She expressed doubt about the allegations concerning her son Shahram's dealings, but she said she was too busy to follow them in detail.

The CIA, she said, had obviously been influenced by her "legend" stemming from her work "24 hours a day to reinforce the monarchy when it was so fragile." How can a major intelligence agency spend its time listening to such "gossip"? She said that neither the CIA nor the Israeli intelligence agency, Mossad, which was highly involved with the shah's own secret service, SAVAK, had done their work properly in Iran. "They never warned us that there were so many Moslem fundamentalists. They never described the danger to us from the mullahs.

"How could the CIA not know who the real drug traffickers were?" she asked. "No one around me was involved in that. I even used to hate cigarettes. There was never anything like

heroin or opium in my family. No one had a habit." She said it was only the things she has been through that induced her to smoke cigarettes, which she did heavily during the interview. During both meetings, she was elegantly attired, but completely in black, apparently in mourning for her brother, who died July 27, 1980, in Egypt and was buried there. She was perfectly coiffed with a single gray hair apparent.

Her apartment, in a fashionable section of Paris, has been decorated in burled wood and gold, with matching furniture. There is heavy security; her personal bodyguard is a well-dressed burly Korean. There have been attempts on her life, most recently in September 1977 on the French Riviera, and one of her sons, a naval captain under the shah, was assassinated in Paris in 1979.

Ashraf conceded that it had perhaps been a mistake to try to develop Iran so fast as a Westernized country. "We should have planned to do it in in 40 years instead of 20." But, she recalled, the early years of her brother's rule were politically chaotic, and he tried to make up for lost time when "he took power for himself in the 1960s and could make giant steps.

"If we weren't appreciated," she said, "it's not my fault, but my people's fault, who didn't understand very well." Iran was on the way to becoming "a second Japan," she said, and the neighboring Arab countries and the West did not want to see Iran become so powerful or develop into a major industrial competitor. "The West was against us; the reds, the blacks and the whites joined hands to overthrow my brother.

"The Americans are the real culprits," she said. "They didn't support my brother in the difficult moments. If Reagan had been President instead of Carter, this wouldn't have happened. He wouldn't have sent Gen. Huyser to stop the Army from expressing itself."

US Gen. Robert Huyser, the deputy commander of NATO, was sent to Iran by the Carter Administration to stabilize the

Iranian armed forces during the revolutions and try to consolidate them behind Shapour Bakhtiar, the prime minister the shah designated before he fled Iran.

Carter's pressure for more civil rights in Iran had caused "great harm," Ashraf said. "You can't grant freedom and democracy all at once. It's like opening a dam. Everything gets swept away by the water. You have to do it gradually.

"The people took advantage to demonstrate in the streets. It snowballed. The Americans didn't know it would end like that. Under Khomeini, all the rights that Carter pressured for will be completely destroyed."

Defending her brother's concentration of resources on the armed forces, Ashraf said that was the only reason that "what's left of our Army has been able to defend itself against Iraq. The victories against Iraq are thanks to my brother."

She insisted that there had been only 3400 political prisoners in Iran in the shah's time. But there were many re-education and rehabilitation camps for young people who had gone astray, she said, as there are for delinquents in any country. The people in those camps were not prisoners, she said, adding that she did not know how many people were in them. Her own foundation ran a charitable facility for 900 poor orphan boys to receive vocational training, she said.

She said that she is now completely out of politics and plays no role of any kind in the activities of the Iranian political exiles against the Islamic regime. They all agree on one thing, she said — the overthrow of Khomeini.

After that, there should be a constitutional monarchy headed by her nephew, and "I hope to be able to return to my country, but it won't be very soon. It won't even be very soon if the opposition groups win on the basis of a constitutional monarchy.

"Even after that, I don't think I would return to Iran for several years. It would be another atmosphere. I have no place

there. I did what I could; I worked for 50 years for the progress of my country.

"But now I'm retired. My era has passed. We couldn't have done more than we did. I live because I must live until the day my heart gives out. It will be very hard for whoever returns to make things normal again. It may take 20, 30 years."

Appendix H.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff

v.

ASHRAF PAHLAVI
Defendant

AMENDED COMPLAINT
Civil Action
No. 83-2199-C

PARTIES

1. The Plaintiff Petros A. Palandjian is an individual residing at 22 Wellesley Road, Belmont, MA. The Plaintiff brings this claim on his own behalf and as assignee of the rights of his father, Grigor Palandjian, as more specifically set forth below.

2. The Defendant Princess Ashraf Pahlavi is an individual with a residence either at 29 Beekman Place, New York City, New York or 625 Park Avenue, New York City, New York. She is the twin sister of the late Shah of Iran who was deposed in 1978.

JURISDICTION

3. The District Court has jurisdiction in the above-captioned case pursuant to 28 U.S.C., § 1332, the parties being from different states and the amount in controversy greatly exceeding $10,000.00. Personal jurisdiction is based on an agreement for a contract to be partially performed in Massachusetts and on tortious acts committed in Massachusetts.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

4. The Plaintiff, born in Iran, was a dual national American/ Iranian citizen in 1966. He was the president of a construction company then located at 56 North Beacon Street, Watertown, MA.

5. The Plaintiff's brother Leon and his parents resided in Tehran, Iran in 1966. The father, Grigor Palandjian, owned Yekan Construction Co., Inc. a construction company with its offices in Tehran, Iran.

6. In June 1966, the Plaintiff first met with the Defendant; several meetings occurred at the Plaintiff's office in Watertown, Massachusetts and at his home in Belmont, Massachusetts. The Defendant also visited the current construction projects of the Plaintiff.

7. At these meetings, the Defendant stressed Iran's need for trained people such as the Plaintiff who had extensive experience in the development and construction of large real estate projects.

8. During the course of these meetings in Massachusetts, the Plaintiff and the Defendant entered into a contract whereby they agreed to develop into a holiday resort property located on the Caspian Sea ("the Property") in Iran. The development was ultimately known as Kazar Shahr.

9. The terms of the contract between the Plaintiff and the Defendant were as follows:

(a) The Defendant was to purchase the property at an estimated cost of two million ($2,000,000.00) dollars.

(b) The Plaintiff was to invest up to two million ($2,000,000) dollars in time, equipment, and personnel;

(c) The Plaintiff and his brother Leon Palandjian were to form a company for the purposes of developing and constructing the Caspian Sea project;

(d) The Plaintiff agreed that the markup on the construction work performed on the project would be calculated based on costs plus 15%;

(e) If more than four million ($4,000,000.00) dollars were needed to fund the project, the Plaintiff agreed to borrow funds from a bank up to the amount of five hundred thousand ($500,000.00) dollars;

(f) As lots in the development were sold, any funds borrowed from a bank would be paid first;

(g) After any bank debt had been paid, the Plaintiff and the Defendant would be paid for their initial investments, on a proportional basis, out of any profits generated;

(h) After the payment out of all the above-described amounts, the Plaintiff and the Defendant would split any profits on a 50-50 basis;

(i) The Plaintiff agreed to oversee the development of the Caspian Sea project from his business office in Watertown, Massachusetts; he also agreed to visit the project site in Iran when such visits were necessary.

10. The Plaintiff and his brother thereafter formed a company named Abadani Jazayer. Following the information of this company, the Defendant arranged for title to one million square meters of ocean front property on the Caspian Sea in Babolsar, Iran; to be transferred to Abadani Jazayer.

11. The Plaintiff's brother became the President of Abadani Jazayer; the Plaintiff's brother and father, both residents in Iran, had signature rights for the company and held 100% of the shares in bearer form on the following basis: 50% for the Plaintiff and 50% for the benefit of the Defendant.

12. In June 1966, during the meetings held in Massachusetts, and described above in paragraph 6, the Plaintiff and his family discussed with the Defendant obtaining the rights to an exclusive distributorship of Cessna Aircraft in Iran. Subsequently, the Plaintiff's family obtained the Cessna distributorship in the name of Hooraseman Corp. The Defendant had a 15% interest in this distributorship.

13. Construction on the Caspian Sea project, known as Kazar Shahr, began in approximately 1968.

14. From 1966 through July, 1969, the Plaintiff supervised the construction and development of Kazar Shahr, both visiting the site and performing work in his Watertown office.

15. In July 1969, the Plaintiff's brother, who had been assisting in the development of Kazar Shahr and in running Cessna Aircraft, died in an airplane crash.

16. At the request and insistence of the Defendant, the Plaintiff in late 1969 moved to Iran to assume his brother's responsibilities and to perform on-site supervision of the Kazar Shahr project. At that time, the Plaintiff became president of Abadani Jazayer and of Hooraseman. The Plaintiff also came to hold the bearer shares of Abadani Jazayer and Hooraseman.

17. During the course of the Kazar Shahr project's construction, the Plaintiff experienced firsthand the Defendant's independent power within Iran. In late 1969, following a dispute with the Defendant, the Plaintiff found his lines of credit necessary to the performance of construction on the project cut off overnight; the Minister of Roads and Finance refused to pay the Plaintiff for over one million ($1,000,000.00) dollars of completed construction work. With a resolution of his dispute with the Defendant, the Plaintiff was paid and his line of credit was restored.

18. In 1970, the Kazar Shahr project was ready for marketing.

19. In late 1970, the Plaintiff met with the Defendant and stated that he had received substantial offers to buy Abadani Jazayer and Hooraseman. The Defendant refused to consider these offers and, because of this and other disputes, instructed the Plaintiff never to return to Iran. Fearing for his own safety and that of family members still residing in Iran and fearing economic injury to his family's other business dealings in Iran, the Plaintiff acceded to the Defendant's instruction and did not return to Iran.

20. Thereafter, the Defendant appointed a replacement for the Plaintiff to complete the development and marketing of the Kazar Shahr project. She also appointed her cousin Shahrair Dadsetan to run the Cessna distributorship owned by Hooraseman.

21. Subsequently and following demands from the Defendant's agents, Grigor Palandjian released the bearer shares of Abadani Jazayer to the Defendant's agents.

22. In 1971, the Plaintiff was visited at his lawyer's office in Watertown, Massachusetts by the Defendant's cousin Dadsetan. Dadsetan, acting as agent for the Defendant, stated that the Defendant wanted the Cessna distributorship for her son Shahram Pahlavi and that, if the Plaintiff did not release his rights to the Cessna distributorship, "The Princess would be very upset". Fearing the threat expressed to him by Dadsetan, the Plaintiff signed papers provided by Dadsetan which effectively turned over the Plaintiff's rights to Cessna distributorship held by Hooraseman. The Plaintiff received no payment from the Defendant for the Cessna distributorship which had value in excess of five million ($5,000,000.00) dollars.

23. In approximately 1972, the Plaintiff and the Defendant met in Geneva, Switzerland. Although the Defendant had barred the Plaintiff from returning to Iran and thereby had prevented his running his business interests personally, the Defendant assured the Plaintiff that he would be paid for the construction work done on the Kazar Shahr project and also for his share of the profits generated by the sale of lots and/or houses in the project. The Defendant stated that she had instructed her chief of operations, Alli Izadi, to pay the Plaintiff one million seven hundred thousand ($1,700,000) dollars which sum represented the unpaid portion of construction work performed on the project by the Plaintiff. She also stated that the house lots in the development were selling for four to five

times the amount anticipated that the project had already made twenty-five million ($25,000,000.00) dollars in profits, and that the profits to be shared would be in excess of fifty million ($50,000,00) dollars. When the Plaintiff requested his share of the profits, the Defendant stated that he would be paid. The Defendant also stated that, just as his family once held her shares in Abadani Jazayer for her benefit, she now held the Plaintiff's shares for his benefit.

24. Subsequently, the Plaintiff spoke with the Defendant several times to request that she pay him the monies owed him from the Kazar Shahr project.

25. In approximately 1972, Grigor Palandjian was approached by the Defendant's agent, Alli Izadi, her chief of operations. Izadi stated that the Defendant wanted to buy the building in Tehran, Iran located at 43 Damagan Street in which the Hooraseman offices were located. The agent also stated "You are an old man who has already lost one son. You have a peaceful life with a healthy son left. Your family will be taken care of. Don't push your luck." Thereafter, the Plaintiff received a telephone call from the Defendant wherein she stated "You will get paid. Don't push me." The Defendant also suggested to the Plaintiff that his father agree to sell the Hooraseman office building to her.

26. The Plaintiff Grigor Palandjian signed over title to the Hooraseman office building to the Defendant's agents. He never received payment from the Defendant for said building valued in excess of one million four hundred thousand ($1,400,000.00) dollars.

27. The Plaintiff, fearing for the life and safety of himself and his family and also for his and his family's investments in Iran, refrained from commencing litigation to enforce his rights to payment.

28. In 1978, the Defendant's brother, the Shah of Iran, was deposed from power and took up residence in Cairo, Egypt.

29. The Plaintiff, like many Iranians residing outside of Iran, believed that the Shah's family would return to power eventually and continued to believe that the Shah's family exercised power and control through their agents now outside of Iran.

30. In 1979, the Plaintiff with his lawyer met with the Defendant. She asked the Plaintiff to give her additional time to pay him for the debts owed to him.

31. In July 1980, the Defendant called the Plaintiff at his Brookline office, stating that her brother, the Shah, was dying and that as soon as she came to New York, she would pay him the monies owed to him. She stated that she would be arriving in the United States soon.

32. The Defendant has never paid the Plaintiff for any of the monies due and owing to him from the Kazar Shahr project, has never paid the Plaintiff for his interest in Hooraseman, the holder of the Cessna Aircraft distributorship, and has never paid the Plaintiff or his father for the Hooraseman building. The Plaintiff believes his damages are in excess of thirty million ($30,000,000.00) dollars.

Count I (Breach of Contract)

33. Plaintiff incorporates the allegations contained above in paragraphs 1 through 32 as though herein set forth.

34. By her failure to pay the Plaintiff for his profits in the Kazar Shahr development and for the construction work performed on said project, and by preventing the Plaintiff from returning to Iran to complete the project, the Defendant has breached the terms of the agreement set forth above in paragraph 9.

COUNT II (Conversion)

35. Plaintiff incorporates the allegations contained above in paragraphs 1 - 32 as though herein set forth.

36. The Defendant through her agent has converted the Plaintiff's property rights in the Cessna Aircraft distributorship in Iran, his interest in the Kazar Shahr project, and his father's ownership of the Hooraseman office building.

COUNT III (Unjust Enrichment)

37. Plaintiff incorporates the allegations contained above in paragraphs 1 through 32 as though herein set forth.

38. The Defendant has obtained rights and title to the Plaintiff's property, as described above, through the exercise of duress, and has been unjustly enriched by her actions.

39. In equity, the Defendant holds the Plaintiff's shares and interests in the Kazar Shahr project and the Plaintiff's interest in Hooraseman, owner of the Cessna dealership, in a constructive trust for the benefit of the Plaintiff.

COUNT IV (Quantum Meruit)

40. Plaintiff incorporates the allegations contained above in paragraphs 1-21, 23, and 27-32 as though herein set forth.

41. The Plaintiff performed construction work on the Kazar Shahr project.

42. The fair and reasonable value of said construction work performed by the Plaintiff, including labor and materials, is one million seven hundred thousand ($1,700,000.00) dollars.

43. The Plaintiff performed said construction work on the Kazar Shahr project on the reasonable expectation that he would be paid.

44. The Defendant knew of the Plaintiff's reasonable expectation that he would be paid for the value of his construction work prior to her receiving any profits and she permitted the Plaintiff to perform said construction work without objection by her.

45. On information and belief, the Defendant has received profits from the Kazar Shahr project in excess of fifty million ($50,000,000.00) dollars.

46. The Defendant owes the Plaintiff one million seven hundred thousand ($1,700,000.00) dollars for the fair and reasonable value of the construction work he performed on the Kazar Shahr project.

COUNT V (Breach of Fiduciary Duty)

47. Plaintiff incorporates the allegations contained above in paragraphs 1-24 and 27-32 as though herein set forth.

48. The Defendant has breached her fiduciary duties to the Plaintiff arising from the contract entered into between the Plaintiff and Defendant as described above in paragraph 9 and arising from her holding of the Plaintiff's shares in Abadani Jazayer and Hooraseman Corp. since at least 1971.

WHEREFORE, the Plaintiffs demands judgment as follows:

1. Under Count I for breach of contract, one million seven hundred thousand ($1,700,000) dollars for the Plaintiff's investment of time, labor and materials on the Kazar Shahr project and a sum unspecified in amount for his one-half share of the profits generated by said development.

2. Under Count II for conversion, a sum unspecified in amount but exceeding thirty million ($30,000,000) dollars.

3. Under Count III for unjust enrichment, an accounting of the Plaintiff's rights and profits as described above, and an order by this Court requiring the Defendant to pay to the Plain-

tiff sums which she shall be deemed to have held for his benefit in a constructive trust since late 1970. In the alternative, the Plaintiff demands money damages in an amount unspecified but exceeding thirty million ($30,000,000) dollars.

4. Under Count IV for quantum meruit, one milion seven hundred thousand ($1,700,000.00) dollars for construction performed by the Plaintiff on the Kazar Shahr project.

5. Under Count V for breach of fiduciary duty, a sum unspecified but exceeding thirty million ($30,000,000) dollars.

Respectfully submitted,

M. Frederick Pritzker
Elizabeth A. Ritvo
Brown, Rudnick, Freed & Gesmer
One Federal Street
Boston, MA 02110
(617) 542-3000

Attorneys for the Plaintiff

Dated: July 19, 1984

20-74(145)

Appendix I.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff
vs. C.A. NO. 83-2199-C
ASHRAF PAHLAVI,
Defendant

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Ashraf Pahlavi moves, pursuant to Fed. R. Civ. P. 56, for summary judgment on the ground that there is no genuine issue as to material fact and that she is entitled to judgment as a matter of law because plaintiff's claims are barred both by the statute of limitations and by the statute of frauds.

ASHRAF PAHLAVI,

By her Attorneys,

Harvey Weiner
PEABODY & ARNOLD
One Beacon Street
Boston, MA 02108
(617) 523-2100

Appendix J.

Docket No. 83-2199

Filing Date: 7/28/83 ON APPEAL

PLAINTIFFS	DEFENDANTS
PETROS A. PALANDJIAN	ASHRAF PAHLAVI

CAUSE

CONTRACT — Diversity

Attorneys

M. Frederick Pritzker, Esq.
Elizabeth A. Ritvo, Esq.
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One Federal St.
Boston, MA 02110
542-3000

Harvey Weiner, Esq.
Peabody and Arnold
One Beacon Street
Boston, MA 02108
523-2100

PROCEEDINGS

Date	NR	
July 27	1	Complaint FILED. Summons issued.
Aug 09	2	P's notice of taking deposition of deft on 10-26-83 FILED. cs.
29	3	Ltr from Wm. E. Jackson to p's counsel dtd 08-25-83 re service on defendant FILED.
Sep 01	4	P's motion for appt of special process server ALLOWED & FILED. cc/c
27	5	Affidavit of service on defendant wso 09-13-83 FILED.
Oct. 04	6	D's motion to dismiss FILED. cs.
"	7	D's motion for leave to extend time to file brief in support of motion to dismiss, up to & including 11-14-83 FILED. cs.
05		CAFFREY, CH.J., re: #7 MOTION ALLOWED. cc/cl.
"	8	P's opposition to motion to extend time FILED. cs.
07	9	Pltff's motion to reconsider re:#7 FILED. cs.
12		CAFFREY, CH.J., re:#9 MOTION DENIED. cc/cl.
Nov. 15	10	D's memorandum in support of motion to dismiss FILED. cs.
"	11	D's affidavit in support of motion to dismiss FILED. cs.
"	12	D's notice of taking depo of pltff on 11-23-83 FILED. cs.
17	13	P's motion to compel FILED. cs.
"	14	P's motion for protective order and for sequencing of discovery FILED. cs.
"	15	P's memorandum in support of motion for protective order and for sequencing and motion to compel FILED. cs.

PROCEEDINGS

DATE	NR	
22	16	P's motion for extension of time to file a reply memo to d's motion to dismiss FILED. cs.
29	17	D's opposition to p's motion for a protective order FILED. cs.
"	18	D's opposition to p's motion to compel FILED. cs.
"	19	D's memorandum in opposition to p's motions to compel and for a protective order and sequencing FILED. cs.
"		CAFFREY, CH.J., re:# 13 & #14 MOTIONS DENIED. cc/cl.
30	20	Affidavit of Petros A. Palandjian in opposition to deft's motion to dismiss FILED. cs.
"	21	Affidavit of Robert M. Mardirosian in opposition to deft's motion to dismiss FILED. cs.
Dec. 2		CAFFREY, CH.J. Case called for hearing on all pending motions; Hearing on deft's motion to dismiss; arguments; Motion taken under advisement.
Dec 01	22	Pltff's motion to file late FILED. cs.
"	23	Pltff's memorandum in opposition to deft's motion to dismiss FILED.
02	24	Deft's motion to strike part of the affidavit of Robert Mardirosian submitted by pltff in opposition to d's motion to dismiss FILED.
"	25	Deft's motion to strike parts of the affidavit of the pltff submitted by the pltff in opposition to d's motion to dismiss FILED.
"	26	Deft's notice of taking depo of pltff on 12-13-83 FILED. cs.
07	27	P's opposition to deft's motion to strike affidavit FILED. cs.
09	28	Ltr to Chief Judge Caffrey dtd 12-08-83 from Atty Ritvo re: service of s&c on deft FILED.

PROCEEDINGS

DATE	NR	
Dec 20	29	Affidavit of Dominique Pollet (In French) FILED.
"	30	Translation of Affidavit of D. Pollet FILED.
"	31	Affidavit of Jacques Sales with one page attachment FILED.
21	32	D's notice of taking depo of Robert Mardirosian on 01-04-84 FILED. cs.
1984		
Jan 06	33	Ltr to clerk dtd 01-04-84 from Atty Weiner re: service in France is insufficient FILED.
12	34	Pltff's response to deft's request for docu, filed. c/s
18	35	P's notice of taking depo of Ashraf Pahlavi on Jan. 27, 1984 at 11:00 am., FILED. c/s
Feb 01	36	Ltr to Judge Caffrey from Attys Pritzker & Ritvo dtd 01-31-84 re: requesting the Court to defer final consideration on d's motion to dismiss until p has filed a supplemental memorandum in opposition to motion to dismiss FILED.
08	37	D's 1st request for production of documents FILED. cs.
16	38	P's motion for permission to file supplemental memorandum FILED. cs. (Supplemental memo attached)
27		CAFFREY, CH.J., re:#38 MOTION ALLOWED. cc/cl.
Mar 08	39	Deft's motion for permission to file supplemental memorandum FILED. cs.
"		CAFFREY, CH.J., re:#39 MOTION ALLOWED. cc/cl.
"	40	Deft's supplemental memorandum in support of motion to dismiss FILED. cs.
"	41	Affidavit of Harvey Weiner, with attachments, FILED.

PROCEEDINGS

DATE	NR	
Mar 12	42	Pltff's response to deft's supplemental memorandum in support of motion to dismiss FILED. cs.
19	43	Pltf's response to deft's first request for prod of docu, filed. c/s
22	44	P's notice of deposition of Ashraf Pahlavi at 10:00 a.m. on April 11, 1984, filed. c/s
29	45	Deft's motion for a protective order and memorandum in support of motion attached and FILED. cs.
Apr 02	46	Pltff's opposition to deft's motion for a protective order FILED. cs
"		CAFFREY, CH.J., re:#45 MOTION ALLOWED. cc/cl.
May 10	47	CAFFREY, CH.J.,MEMORANDUM AND ORDER ENTERED . . . 1) Deft's motion to dismiss for lack of personal jurisdiction is denied as to Counts I and IV. 2) The motion to dismiss is allowed as to those portions of Counts II and III which relate to the Hooraseman Office Bldg and denied as to the remainder of Counts II and III. 3) Deft's motion to dismiss for insufficiency of service is denied. 4) Deft's motions to strike are denied. cc/cl, West, Bureau of National Affairs, NCAI, CCH, MLW, MS, etc.
May 25	48	Deft's second request for production of documents FILED. cs.
Jun 04	49	Stipulation extending time for deft to answer complaint up to and including 06-01-84 FILED. Assented to.
"	50	Answer of defendant to pltff's complaint FILED, cs.
06		Notice of scheduling conference sent to all counsel. Conference scheduled for June 21, 1984 at 10:00 AM.

PROCEEDINGS

DATE	NR	
Jun 12	51	Pltff's demand for jury trial FILED, cs.
	21	CAFFREY, CH.J. Case called for Rule 16(b) scheduling conference; Short form scheduling order attached with Court's rulings; Pltff to file motion for summary judgment and supporting memo by Sept. 21, 1984; Deft. to file opposition and supporting memo by Oct. 5, 1984. Hearing on summary judgment motion scheduled for Oct. 29, 1984 at 11:00AM. Court orders all discovery to be complete by Oct. 1, 1984.
Jul 17	52	Joint motion to continue various discovery dates FILED. Assented to
	18	CAFFREY, CH.J., re:#52 MOTION ALLOWED BY THE COURT. cc/cl. (Depo of Princess -10-18-84; motion for summary judgment -11-05-84; memo in opposition to s/j-11-20-84; hearing on motion for s/j-12-14-84; discovery deadline-11-15-84.)
	20 53	P's motion to amend complaint FILED. cs. (Amended complaint attached)
"	54	P's first request for production of documents FILED. cs.
"	55	P's response to deft's second request for production of docs FILED. cs.
	26 56	Deft's opposition to p's motion to amend complaint FILED. cs.
	30 57	D's notice of taking depo of pltff on 08-15-84 FILED. cs.
Aug 03	58	Deft's notice of taking depo of Grigor Palandjian on 09-13-84 FILED. cs.

PROCEEDINGS

DATE	NR	
Aug 14	59	CAFFREY, CH.J., MEMORANDUM AND ORDER ENTERED . . . re:p's motion to amend complaint. Pltff's motion to amend is hereby ALLOWED. AND ALL REFERENCES TO THE HOORASEMAN OFFICE BUILDING SHOULD BE AND HEREBY ARE STRICKEN FROM PLTFF'S AMENDED COMPLAINT. cc/cl. Bureau of Nat'l Affairs, NCAI, CCH, MLW, etc.
22	60	Stipulation extending time to 09-19-84 for deft to answer p's request for production of documents FILED. Assented to.
Sep 04	61	Deft's answer to pltff's amended complaint FILED. cs.
06		CAFFREY, CH.J., re:#60 STIPULATION APPROVED. cc/cl.
18	62	Deft's response to pltff's 1st request for production of documents FILED. cs.
24	63	Pltff's interrogatories to the defendant FILED. cs.
Oct 22	64	Notice of Depo of Ronald Koven, 10-26-84 at 5PM. c/s
23	65	Deft's answers to pltff's interrogatories FILED. cs.
25	66	Deft's notice of taking depo of Martin Panos on 11-01-84 FILED. cs.
"	67	Deft's notice of taking depo of Ellis Chouinard on 11-01-84 FILED. cs.
"	68	Deft's notice of taking depo of Peter Dimeo on 11-02-84 FILED. cs.
"	69	Deft's notice of taking depo of Grigor Nazarian on 11-02-84 FILED. cs.
"	70	Deft's notice of taking depo of Boris Kanieff on 11-02-84 FILED, cs.

PROCEEDINGS

DATE	NR	
Nov 01	71	Deft's notice of taking depo of Ronald Koven on 11-05-84 FILED. cs.
	02 72	Joint motion to continue various discovery dates FILED. Assented to.
	14	CAFFREY, CH.J., re:# 72 MOTION ALLOWED BY THE COURT. cc/cl.
	14 73	Deft's motion for summary judgment and memorandum in support of summary judgment attached and FILED. cs.
"	74	Affidavit of Harvey Weiner in support of motion for s/j FILED.
"	75	Affidavit of Ashraf Pahlavi in support of motion for s/j FILED.
	19 76	Pltff's motion to compel answers to interrogatories and memorandum in support of motion attached and FILED. cs.
"	77	Deft's notice of taking depo of Robert Mardirosian on 11-27-84 FILED. cs.
"	78	Deft's notice of taking depo of Patricia Pino on 11-27-84 FILED. cs.
	26 79	Deft's notice of taking depo of Ali Izadi on 12-04-84 FILED. cs.
"	80	Joint motion to continue final discovery date FILED. Assented to.
"	81	Deft's motion to extend time to 12-17-84 within which to correct and sign deposition transcript FILED. CS.
	27	CAFFREY, CH.J., re:#80 MOTION ALLOWED BY THE COURT; re:#81 MOTION ALLOWED BY THE COURT. cc/cl.
	29 82	Deft's opposition to pltff's motion to compel answers to interrogatories and memorandum in support of opposition attached and FILED cs.

PROCEEDINGS

DATE	NR	
Dec. 03	83	Deft's notice of taking depo of Nancy Spolinza on Dec. 10, 1984 FILED. cs.
04		CAFFREY, CH.J., re:#76 MOTION DENIED, cc/cl.
24	84	Pltff's opposition to deft's motion for summary judgment FILED. cs.
"	85	Pltff's affidavit in opposition to deft's motion for summary judgment FILED. (UNSIGNED)
"	86	Appendix to pltff's opposition to deft's motion for summary judgment FILED.
27	87	P's notice of taking depo of D.R. Edwards on 01-08-84 FILED. cs.
"	88	Pltff's affidavit in opposition to deft's motion for summary judgment FILED.
1985		
Jan 10	89	D's motion for leave to file reply memo to opposition of pltff FILED. (reply attached) cs.
11		CAFFREY, CH.J., re:#89 MOTION ALLOWED. cc/cl.
"	90	Reply memorandum in support of deft's motion for summary judgment FILED. cs.
Feb. 01		Notice of motion hearing sent to all counsel. Hearing scheduled for 03/21/85 at 12:15PM.
Feb. 04	91	Pltff's motion for permission to file response to defts' reply memorandum FILED. cs. (Response attached).
"		CAFFREY, CH.J., re:#91 MOTION ALLOWED BY THE COURT. cc/cl.
"	92	Pltff's response to deft's reply memorandum FILED. cs.
22	93	P's motion for continuance of summary judgment hearing FILED. cs.

PROCEEDINGS

DATE	NR	
Feb 27		CAFFREY, CH.J., re:#93 MOTION ALLOWED. MOTION HEARING RESCHEDULED TO MARCH 19, 1985 AT 10:00AM. cc/cl.
Mar 26		Notice of motion hearing sent to all counsel. Hearing scheduled for 04-22-85 at 10:30AM.
Apr 12	94	Deft's motion for continuance of summary judgment hearing FILED. Assented to.
16		CAFFREY, CH.J., re:#94 MOTION ALLOWED. HEARING SCHEDULED FOR MAY 16, 1985, AT 11:00AM. cc/cl.
May 20		Case transferred to Judge Young. Counsel & court ran notified.
May 22		YOUNG,D.J.: Hearing on Deft's mtn for S/J rescheduled to 6/19/85 at 2:00PM. Counsel notified by telephone.
Jun 19		YOUNG MOTION SESSION: Motion for S/J under advisement.
Aug 16	95	YOUNG, DJ: MEMORANDUM & ORDER. Motion for S.J. DENIED. cc/cl Deft has 10 days to apply to Court of Appeals for permission to proceed with an appeal.
19	96	Letter to Judge from Ps counsel re: Memo & Order 8-16-85.
21	97	Ps Motion for clarification of 8-16-85 Memo & Order, c/s
21	98	Ds Motion for stay of order dated 8-16-85, cs
21	99	Ds Motion for reconsideration of Memo & Order dated 8-16-85, cs
21	100	Ds Memo in support of M/reconsider memo & order, c/s

PROCEEDINGS

DATE	NR	
Aug 23		YOUNG, DJ: Hearing on Ps motion for reconsideration, stay of entry of order, and for clarification. 1) The motion for reconsideration is ALLOWED to the extend of this hearing. 2) An order will enter as to Count One of the complaint 8-23-85 or soon thereafter as practicable. 3) With respect to the time for perfecting an appeal to the First Circuit of Appeals; the time will run from the date of entry of the Supplemental Order. 4) the motion for clarification is ALLOWED to the extent of this hearing, and otherwise DENIED.
26	101	YOUNG, DJ: SUPPLEMENTAL MEMO & ORDER. The Court is not in a position to decide at this stage of the case that estoppel cannot be shown; the statute of frauds does not bar Palandjian's contract claim. cc/cl
27	102	Transcript on Hearing on M/Reconsideration & Clarification, 8-23-85.
Sept 17	103	Order of Court received from the Court of Appeals entered . . . The petition for permission to appeal is granted. F.F.Pd. 9/19/85
18		Certified copy of docket entries and original pleadings forwarded to the Court of Appeals.

Appendix K.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff
v. CIVIL ACTION NO. 83-2199-Y
ASHRAF PAHLAVI,
Defendant

MOTION FOR RECONSIDERATION

Defendant Ashraf Pahlavi hereby moves this Court to reconsider the Memorandum and Order, dated August 16, 1985, and to grant Defendant's motion for summary judgment for the reasons set forth in the accompanying memorandum.

DEFENDANT
ASHRAF PAHLAVI

By her Attorneys,

/s/_____

Harvey Weiner
PEABODY & ARNOLD
One Beacon Street
Boston, Massachusetts 02108
(617) 523-2100

CERTIFICATE OF SERVICE

I, Ellen A. Loeb, hereby certify that I served the within Motion for Reconsideration and accompa.ying Memorandum in support thereof on plaintiff by hand-delivering copies thereof to:

M. Frederick Pritzker, Esq.
Brown, Rudnick, Freed & Gesmer
One Federal Street
Boston, MA 02110

and

Elizabeth A. Ritvo, Esq.
Brown, Rudnick, Freed & Gesmer
One Federal Street
Boston, MA 02110

/s/_____
Ellen A. Loeb

February 6, 1986

Appendix L.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN,
Plaintiff
v. CIVIL ACTION NO. 83-2199-Y
ASHRAF PAHLAVI,
Defendant

MOTION FOR RECONSIDERATION

Defendant Ashraf Pahlavi hereby moves this Court to reconsider the Memorandum and Order, dated August 16, 1985, and to grant Defendant's motion for summary judgment for the reasons set forth in the accompanying memorandum.

DOCKETED February 24, 1986,

In light of the decision of the First Circuit in *Palandjian* v. *Pahlavi*, No. 85-1718, this court reconsiders its earlier ruling herein and, upon reconsideration, allows the defendants motion for summary judgment. While circumstances may be imagined where duress might toll a statute of limitations under the law of Massachusetts, even a generous reading of the plaintiff's affidavits and supporting materials does not upon the reasoning expressed in this court's original memorandum, justify the application of a duress exception under Massachusetts law in these circumstances judgment for the defendant.

/s/William G. Young
District Judge

DEFENDANT
ASHRAF PAHLAVI
By her Attorneys,

/s/_____

Harvey Weiner
PEABODY & ARNOLD
One Beacon Street
Boston, Massachusetts 02108
(617) 523-2100

Appendix M.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 85-1718.

PETROS A. PALANDJIAN,
Respondent, Appellee,

v.

ASHRAF PAHLAVI,
Petitioner, Appellant.

ORDER OF COURT

Entered: January 30, 1986

The order of this Court of September 17, 1985 allowing an interlocutory appeal is vacated in accordance with the opinion filed this day.

No Costs.

By the Court:

FRANCIS P. SCIGLIANO, CLERK

By: Richard W. Gordon
Chief Deputy Clerk

Appendix N.

United States Court of Appeals

For the First Circuit

No. 85-1718.

PETROS A. PALANDJIAN,
Plaintiff, Appellee,
v.
ASHRAF PAHLAVI,
Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, U.S. District Judge]

Before
Bownes, Aldrich and Breyer,
Circuit Judges.

Harvey Weiner with whom Ellen A. Loeb, Peabody & Arnold, William E. Jackson, James E. Clapp, and Milbank, Tweed, Hadley & McCloy were on brief for appellant.

M. Frederick Pritzker with whom Elizabeth A. Ritvo and Brown, Rudnick, Freed & Gesmer were on brief for appellee.

January 30, 1986

Per Curiam. In this action for conversion of personal property and breach of contract, plaintiff's only answer to the defense of the statutes of limitations is that, by duress, for fear of personal injury, he was prevented from bringing suit any sooner. On defendant's motion for summary judgment, plaintiff filed affidavits of the facts upon which he based his claim. After reviewing the facts, the court expressed its views as follows:

> (1) "I completely agree that a duress exception can theoretically toll the statutes of limitation [under Massachusetts common law]."
>
> (2) Another Massachusetts district judge has viewed almost identical affidavits as presenting a question of fact as to duress.
>
> (3) I do not myself think so, but "appropriate amenities [and] profound considerations of equality in the treatment of litigants" call for "considerable deference," citing Wyzanski, "The Essential Qualities of a Judge" (1956), reprinted in Handbook for Judges 96 (American Judicature Society 1975).
>
> (4) I will deny the motion for summary judgment and certify for an interlocutory appeal because "[t]he extent of the duress exception to the running of the Massachusetts statutes of limitations is here 'a controlling question of law as to which there is a substantial ground for difference of opinion.'"

This court (but not the judges presently sitting) permitted the appeal.

The first argument presented by appellant is that Massachusetts would, under no circumstances, recognize duress as tolling the statutes. The district court did not agree. Neither does the Massachusetts Appeals Court: "It is possible to imagine

circumstances in which duress might toll the statute." *Babco Industries, Inc.* v. *New England Merchants National Bank,* 6 Mass. App. 929, 380 N.E.2d 1327, 1328 (1978). Although the merest dictum, defendant can find nothing to contradict it, and thus presently we doubt there is "substantial ground for a difference of opinion," 28 U.S.C. § 1292(b), about the bare existence of such an exception in some conceivable circumstances. *See Adamowicz* v. *Town of Ipswich,* 395 Mass. 757, 481 N.E.2d 1368, 1370 n.4 (1985).

Point 2 we take to be factually correct. However, as to point 3, we are less impressed. That a ruling by one district judge should impose on nine others the duty to try a lengthy case, or to make, say, a ruling they believe will result in reversal, is an awesome suggestion. Nor does equality of treatment justify the perpetuation of error. We can agree that a prior ruling in the same case should not be reversed by a new judge without grave conviction, although even here there is no necessary "law of the case." For collection of cases, see 1B J. Moore, J. Lucas & T. Currier, Moore's Federal Practice ¶ 0.404[4.-2] (2d ed. 1984). To continue a believed error made in unrelated cases is a doubtful practice.

As to point 4, the question of whether Massachusetts would recognize the principle of duress as tolling the statute would be a good example of a "controlling question of law." But the question of the extent of such an exception is a classic example of what is not to be raised by intermediate appeals. It resembles a "sufficiency of the evidence" claim — the kind of claim which an appellate court can better decide after the facts are fully developed. The fact that appreciable trial time may be saved is not determinative, for such would often be true of interlocutory appeals. Rather, as we said in *McGillicuddy* v. *Clements,* 746 F.2d 76 (1st Cir. 1984):

> [I]nterlocutory certification under 28 U.S.C. § 1292(b) should be used sparingly and only in ex-

> ceptional circumstances, and where the proposed intermediate appeal presents one or more difficult and pivotal questions of law not settled by controlling authority. *In re Heddendorf*, 263 F.2d 887, 888-89 (1st Cir. 1959) (Magruder, Ch. J.).

Id. at 76 n.1.

We consider our initial decision to hear this appeal improvident. *See Slade* v. *Shearson, Hammill & Co.*, 517 F.2d 398, 400 (2d Cir. 1974); *Molybdenum Corp. of America* v. *Kasey*, 279 F.2d 216, 217 (9th Cir. 1960) (per curiam). The district court remains free to develop the facts further, to certify questions to the Supreme Judicial Court, *see* Mass. S.J.C. Rule 1:03, or to proceed to decide other issues, as it believes appropriate.

The order allowing an interlocutory appeal is

Vacated.

Appendix O.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETROS A. PALANDJIAN
Plaintiff,
v. Civil Action
ASHRAF PAHLAVI, 83-2199-Y
Defendant.

SUPPLEMENTAL MEMORANDUM AND ORDER
YOUNG, D.J. August 26, 1985

On August 16, 1985, this court denied the motion of the defendant Pahlavi for summary judgment, albeit with reservations, after analyzing whether the plaintiff Palandjian's claim of duress was adequate to toll the relevant statutes of limitations. Both parties promptly sought reconsideration, Pahlavi's counsel correctly observing that, were Pahlavi not to prevail on her statute of limitations argument, she is nevertheless entitled to a ruling on her statute of frauds defense to Count I — the contract count. After further hearing, this supplemental memorandum addresses that issue.

The Statute of Frauds Defense

Pahlavi has argued that Palandjian's breach of contract claim is barred by the Massachusetts statute of frauds, which generally provides that no action shall be brought upon an agreement that is not to be performed within one year unless that agreement is in writing and signed by the party charged with a breach. Mass. Gen. Laws ch. 259, § 1. According to Pahlavi, the Kazar Shahr development could not have been completed within one year after the alleged oral contract was made, and

therefore the contract claim is barred. Palandjian concedes that the entire Kazar Shahr project could not have been completed within one year, but argues that the obligations of the parties under the alleged agreement could have been concluded within that period. Palandjian further contends that Pahlavi is estopped from asserting a statute of frauds defense. Because this court holds that the estoppel doctrine may apply to this case, it is unnecessary to decide whether the alleged contract could have been performed within one year.

The Restatement (Second) of Contracts § 139(1) sets forth the circumstances under which a defendant may be estopped from invoking a statute of frauds defense to a claim falling within the scope of the statute:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

Restatement (Second) of Contracts § 139(1) (1981). Section 139(2) lists several factors which are significant in determining "whether injustice can be avoided only by enforcement of the promise."

The Massachusetts courts have held that the estoppel doctrine may apply in the statute of frauds context. *See Cellucci* v. *Sun Oil Co.*, 2 Mass. App. Ct. 722, 728 (1974) ("[A]n estoppel, if appropriately applied in this case, would also preclude [the defendant] from asserting the affirmative defense of the Statute of Frauds."), *aff'd*, 368 Mass. 811 (1975). In *Hickey* v. *Green*, 14 Mass. App. Ct. 671 (1982), the Appeals

Court noted that "the earlier Massachusetts decisions laid down somewhat strict requirements for an estoppel precluding the assertion of the Statute of Frauds," but looked to the Restatement (Second) of Contracts for a statement of the rule presently "applicable in most jurisdictions in the United States." *Id.* 673 (applying the rule of Restatement (Second) of Contracts § 129, which is substantially similar to § 139(1), in a case involving a contract for the sale of real estate); *see Goeken* v. *Kay*, 751 F.2d 469, 472, 474 (1st Cir. 1985) (quoting the Restatement § 139(1), and affirming a decision of the district court which "assumed for the sake of argument" that Massachusetts law permitted recovery upon reasonable reliance on an oral promise, notwithstanding the statute of frauds).

The court in *Cellucci* v. *Sun Oil Co., supra,* summarized the "essential factors giving rise to an estoppel":

> (1.) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made. (2.) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.
> (3.) Detriment to such person as a consequence of the act or omission.

2 Mass. App. Ct. at 728 (quoting *Industrial Bankers of Mass. Inc.* v. *Reid, Murdoch & Co.*, 297 Mass. 119, 124 (1937)) (citations omitted); *see Loranger Construction Corp.* v. *E.F. Hauserman Co.*, 6 Mass. App. Ct. 152, 154 (Keville, J.), *affd*, 376 Mass. 757 (1978).

Pahlavi points out that neither Palandjian's affidavits nor indeed the allegations in his complaint suggest fraud in the inducement or misrepresentation. This is not essential for estoppel to apply. "Recovery in these circumstances requires no

more than a promise on which the promisee could reasonably have placed reliance; and attention is to be focused upon the reasonableness of that reliance." *Loranger Construction Corp.* v. *E.F. Hauserman Co.*, 6 Mass. App. Ct. 152, 159, *aff'd*, 376 Mass. 757, 761 (1978) (Braucher, J.) ("When a promise is enforceable in whole or in part by virtue of reliance, it is a 'contract,' and it is enforceable pursuant to a 'traditional contract theory' . . . .").[1]

Each of the factors necessary to show estoppel may be present in this case. Palandjian has submitted competent evidence indicating that Pahlavi made specific representations regarding the Kazar Shahr project which reasonably induced Palandjian to invest substantial time, money, and other resources toward development of the project. That evidence, if believed, is certainly sufficient to show that Palandjian changed

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[1] Pahlavi attempts to distinguish *Loranger* on the basis that it involved a "promissory estoppel" theory, a doctrine which typically applies where a court is asked to "create" a contract in the absence of consideration. *See* Restatement (Second) of Contracts § 90 (1981). Although the traditional "promissory estoppel" doctrine differs from the type of estoppel at issue here, the principles discussed in *Loranger* are nonetheless relevant to this case. *See Loranger*, 6 Mass. App. Ct. 152, 159 ("it is doubtful that the prohibitions of the Statute of Frauds . . . are applicable where recovery is otherwise warranted on the basis of promissory estoppel") (dictum), affirmed without addressing this issue, 376 Mass. 757, 764 (1978).

If the equitable doctrine of estoppel was applied in this case, the remedy available to the plaintiff might be restricted, even though his action at law survived. *See* Restatement (Second) of Contracts §§ 90, 139 (1981) ("The remedy granted for breach may be limited as justice requires."); *see also Chedd-Angier Production Co.* v. *Omni Publications Int'l, Ltd.*, 756 F.2d 930, 937 (1st Cir. 1985) ("Under § 90 of the Restatement (Second) of Contracts, adopted in its tentative form by the Massachusetts court in *Loranger*, damages available under promissory estoppel range from full contract damages to reliance or restitution damages."). Where recovery rests solely upon the justified reliance of the promisee, without any suggestion of fraud, it would seem equitable that such recovery be measured by the extent of the reliance interest, i.e. restitution, rather than by conferring the benefit of the bargain. *See* Restatement (Second) of Contracts §§ 90 comment d, 139 comment d, 363 comment b (1981).

his position to his substantial detriment. Whether the elements necessary to create an estoppel exist is an issue of fact. *Moran* v. *Town of Mashpee*, 17 Mass. App. Ct. 679, 681 (1984); *Danielczuk* v. *Ferioli*, 7 Mass. App. Ct. 914 (1979) ("The assertion of an estoppel raises factual questions of reliance and reasonableness that should have been left for resolution at trial."). The court is not in a position to decide at this stage of the case that estoppel cannot be shown.

For these reasons, the court rules that, upon this record, the statute of frauds does not bar Palandjian's contract claim.

/s/ William G. Young
WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE

Appendix P.

Petros A. PALANDJIAN, Plaintiff,
v.
Ashraf PAHLAVI, Defendant.
Civ. A. No. 83-2199-Y.

United States District Court,
D. Massachusetts.

Aug. 16, 1985.

Diversity action was brought against sister of the late Shah of Iran for breach of contract, conversion, unjust enrichment, quantum meruit and breach of fiduciary duty. Defendant moved for summary judgment, asserting statute of limitations and statute of frauds. The District Court, Young, J., held that: (1) a duress exception can theoretically toll the statutes of limitations; (2) summary judgment on limitations grounds would be denied for reasons expressed by a court of the same district in accepting duress exception in a closely related case involving the same parties; (3) since plaintiff prevailed on claim of duress, his claims based on alleged repudiation of a constructive trust or fiduciary relationship would not be entertained; and (4) statute of frauds did not bar the contract claim.

Motion denied.

See also, D.C., 586 F.Supp. 671.

. . . . . .

M. Frederick Pritzker, Elizabeth A. Ritvo, Brown, Rudnick, Freed & Gesmer, Boston, Mass., for plaintiff.

Harvey Weiner, Peabody & Arnold, Boston, Mass., for defendant.

MEMORANDUM AND ORDER

YOUNG, District Judge.

The plaintiff in this action, Petros A. Palandjian ("Palandjian"), seeks damages in excess of $30 million on his claims of breach of contract, conversion, unjust enrichment, quantum meruit, and breach of fiduciary duty. The defendant, Ashraf Pahlavi ("Pahlavi"), moves for summary judgment on all counts, claiming that the action is barred both by the statute of limitations and by the statute of frauds. For the reasons that follow, Pahlavi's motion is denied.

I. *Background*

Palandjian is a dual national Iranian-American citizen who has been a resident of the United States since 1963. The defendant Pahlavi is the twin sister of the late Shah of Iran and currently is living in exile. Palandjian alleges the following facts and this court, expressing no opinion thereon, assumes them to be true for purposes of this motion only.

In 1966, Palandjian resided in Massachusetts and was the president of a construction company located in Watertown, Massachusetts. In June of 1966 he first met Pahlavi through his brother Leon Palandjian ("Leon"), who worked for Pahlavi in Iran. During the course of several meetings over a weeklong period in various locations in Massachusetts, Pahlavi and Palandjian entered into an oral contract whereby they agreed to develop a holiday resort, named "Kazar Shahr," on the Caspian Sea in Iran. By this agreement, Pahlavi would purchase the necessary real estate. Palandjian would provide up to $2 million as an initial investment, and he and his brother Leon would form a new company to develop and construct the project, all profits being divided equally between Pahlavi and Palandjian. Palandjian agreed to oversee the development

of the project from his office in Massachusetts and to visit the site in Iran as necessary.

During the June 1966 meetings in Massachusetts, Pahlavi and Palandjian also discussed the need and demand for aviation development in Iran. They agreed to contact Cessna Aircraft to seek the exclusive distributorship for Iran; if successful, Palandjian was to have an 85% interest and Pahlavi a 15% interest. Neither this agreement nor the agreement to develop Kazar Shahr were put in writing — Palandjian did not ask Pahlavi to sign a written contract for fear of insulting her.

Pursuant to these agreements, Palandjian and his brother Leon formed a company, called Abadani Jazayer, to develop the Kazar Shahr project. Because he was a resident of Iran, Leon was named president of the company. The shares of Abadani Jazayer stock were given to the plaintiff's father, Grigor Palandjian, to hold in his safe in Tehran on the basis of 50% for the benefit of Palandjian and 50% for the benefit of Pahlavi.

Palandjian also obtained the exclusive distributorship in Iran for Cessna Aircraft. Palandjian and his brother formed a company named Hooraseman to sell aircraft and parts, and each of the brothers was named individually as a Cessna representative. Leon was named president of Hooraseman and the company shares were held by the plaintiff's father in Tehran.

From 1966 through July 1969, Palandjian supervised the development of the Kazar Shahr project from his Watertown, Massachusetts, office and from periodic site visits. During this period he was in frequent telephone contact from his Massachusetts home and office with Pahlavi regarding the project. In July 1969, Leon died, and Palandjian moved to Iran to assume his brother's responsibilities as president of both the Abadani Jazayer and the Hooraseman companies. From July 1969 through December 1970 Palandjian resided in Tehran except for several brief trips to Massachusetts to visit his family.

Following extensive site development, the Kazar Shahr project was ready for marketing in 1970. In December 1970, Palandjian had a dispute with Pahlavi concerning the amount of time he was spending in Iran. Palandjian proposed that they sell the Abadani Jazayer and Hooraseman companies, a suggestion which angered Pahlavi. While discussing this matter in France, Pahlavi sent the following written message to Palandjian:

> I swear to my highest beliefs that you will never set foot in Iran while I am alive. You are free to leave here whenever you want even if you want to leave tonight.
> P.S. You are free to go wherever you want.

Fearing for his safety, Palandjian did not return to Iran. He moved back to his home in Massachusetts and, from there, continued to supervise the activities of Abadani Jazayer and Hooraseman.

In 1971, Pahlavi moved to wrest control of the two companies from Palandjian. Early that year a representative of Pahlavi went to the Abadani Jayazer offices in Tehran and announced that he was taking over the company and that all documents and models should be turned over to him. The staff reluctantly complied with those demands. At approximately the same time Pahlavi's top assistant, Izadi, visited the plaintiff's father Grigor and demanded the shares of Abadani Jazayer and Hooraseman held by Grigor. According to Grigor's deposition testimony, Izadi stated: "We will have you killed," and "If you and your son and family want to live here without any danger give me the stocks."

Grigor contacted Palandjian about the threats from Izadi, and Palandjian spoke with Pahlavi at least twice about her intent to obtain possession of the shares. Pahlavi replied that she would hold Palandjian's shares for his benefit. Fearing for

Grigor's safety and relying on Pahlavi's statement that she would hold the Abadani Jazayer and Hooraseman shares for his benefit, Palandjian advised his father to release the stock of both companies to Izadi, which his father did.

Shortly thereafter, in 1971, Palandjian was visited in Massachusetts by Pahlavi's cousin, Dadsetan. Dadsetan told Palandjian that he either had to return to Iran at Pahlavi's request or he had to relinquish his rights to the Cessna distributorship. Still fearing Pahlavi's previous threats, Palandjian was unwilling to return to Iran. Dadsetan became more belligerant, stating "She wants Cessna Aircraft. She wants you to give up Cessna if you're not coming back." Dadsetan further stated, "I'm sure you won't want to take a chance and have something unpleasant happen to your mom, to your dad. They have a pleasant life." Palandjian called Pahlavi about Dadsetan's threats and was told that Dadsetan was her representative and that Palandjian was to do as he was told. Pahlavi added, "You don't have to if you don't want to. That's up to you. You decide." In response to a request for payment, Pahlavi stated, "Don't worry about the money. You will get paid." Fearing the possible consequences to him and his family, Palandjian signed papers which relinquished his rights to the Cessna distributorship.

From 1971 through 1982 Palandjian remained in contact with Pahlavi, speaking with her by phone and periodically meeting with her in Geneva or New York. During these conversations, Palandjian repeatedly raised the issue of monies Pahlavi owed him from Hooraseman and Abadani Jazayer. According to Palandjian, Pahlavi acknowledged her debts and told him that he would be paid. Palandjian summarized the circumstances of one meeting: In 1972 he met Pahlavi in Geneva and again asked her for payment. Pahlavi stated that she had instructed her assistant to pay Palandjian $1.7 million for the unpaid construction work he had performed for the Kazar

Shahr development; she also told him that Kazar Shahr had already made $25 million and would make in excess of $50 million, and that he would be paid his share of the profits. In response, Palandjian informed her that he had not received any payment whatsoever.

The Shah of Iran was deposed in 1978 and died in 1980. For some time after 1978 Palandjian believed that the Pahlavi family would return to power eventually and that "the royal family through its agents would exercise power and control while out of power . . . outside of Iran." In 1983 Palandjian came to believe that the Pahlavi family would not return to power in Iran and that he could safely litigate his claims against Pahlavi. Palandjian commenced this suit on July 27, 1983.

II. *The Statute of Limitations Defense*

[1] When a defense of statute of limitations is properly raised, the burden is on the plaintiff to prove that he has complied with the relevant statutes. *Holtzman v. Proctor, Cook & Co., Inc.*, 528 F.Supp. 9, 14 (D.Mass. 1981). The Massachusetts statute of limitations applies in this diversity case. *Molinar v. Western Electric Co.*, 525 F.2d 521, 531 (1st Cir. 1975), *cert. denied*, 424 U.S. 978, 96 S.Ct. 1485, 47 L.Ed.2d 748 (1976). The statute of limitations for contract actions provides that such actions shall be commenced within six years after the cause of action accrues. Mass.Gen.Laws ch. 260, § 2. For claims arising in tort, the Massachusetts statute provides a two-year limitations period for claims arising before January 1, 1974, and a three-year limitations period for claims arising on or after that date. Mass.Gen.Laws ch. 260, § 2A; *Baldassari v. Public Finance Trust*, 369 Mass. 33, 43, 337 N.E.2d 701 (1975).

A. *Counts I, II, IV, and V*

[2] A cause of action for breach of contract accrues at the time of the breach. *Campanella & Cardi Construction Co. v. Commonwealth*, 351 Mass. 184, 185, 217 N.E.2d 925 (1966). Palandjian alleges in Count I that Pahlavi breached their oral contract by "her failure to pay the plaintiff for his profits in the Kazar Shahr development and for the construction work performed on said project." Amended Complaint ¶ 34.

Palandjian's own version of the facts confirms that this alleged breach of contract occurred no later than 1971, when Pahlavi forced him to relinquish control of his interest in the Abadani Jazayer and Hooraseman companies. Similarly, Palandjian's quantum meruit claim in Count IV is based on Pahlavi's failure to pay him the reasonable value of the construction work on the Kazar Shahr project, work which was completed by 1971. Thus, the limitations period on the breach of contract claim (Count I) and the quantum meruit claim (Count IV) ordinarily would have expired no later than 1977, six years before this action was filed.

[3] A similar analysis applies to Palandjian's claim for conversion (Count II). A cause of action in tort accrues at the time of injury to the plaintiff. *Cannon v. Sears, Roebuck & Co.*, 374 Mass. 739, 374 N.E.2d 582 (1978). Palandjian's conversion claim rests upon allegations that Pahlavi through her agents converted (1) Palandjian's property rights in the Cessna Aircraft distributorship in Iran, and (2) Palandjian's interest in the Kazar Shahr project, Amended Complaint ¶ 36. Because these events took place in 1970 and 1971, the limitations period for the conversion claim ordinarily would have expired no later than 1973.

Palandjian contends in Count V that Pahlavi breached her fiduciary duty to him "arising from the contract entered into between Plaintiff and Defendant" and "arising from her holding

of the Plaintiff's shares in Abadani Jazayer and Hooraseman Corp. since at least 1971." Amended Complaint ¶ 48. Assuming that the parties did indeed stand in fiduciary relations to one another, *see Cann v. Berry*, 293 Mass. 313, 316, 199 N.E. 905 (1936), there is nothing in the record to suggest that this cause of action rests on any different footing than Palandjian's other tort and contract claims. Indeed, as Palandjian has himself characterized the claim, it arises from the 1971 breach of contract and Pahlavi's holding of shares "since at least 1971." Accordingly, this court rules that the cause of action for breach of fiduciary duty accrued in 1971.

Palandjian concedes that under ordinary circumstances his complaint would be untimely. However, he contends that the applicable statutes of limitations for all counts of the amended complaint have been tolled on the ground of "duress."

B. *Duress*

Palandjian asserts that he was in fear of the defendant and the Pahlavi family from 1970 until 1983, and not until 1983 did he come to believe that he could safely bring litigation to enforce his rights against this defendant. He argues that as a consequence of this continuous duress, the relevant limitations periods did not begin to run until 1983, and that all of his claims have therefore been brought in a timely manner.

Palandjian has presented substantial evidence that he was subject to duress by Pahlavi when he relinquished his interests in Abadani Jazayer, Hooraseman, and the Cessna distributorship. According to his allegations, in 1970 Pahlavi told him never to set foot in Iran while she was alive. In 1971, Pahlavi and her agent forced Palandjian to give up his property by threatening the safety of his family. Also in 1971, Pahlavi's agent made direct threats to Palandjian's father in Iran.

However, the issue is not whether Palandjian was under duress in 1971. The situation here is considerably different from more typical duress cases, in which a party seeks to avoid an apparent legal obligation on the ground that he agreed to such an obligation under duress. Thus, many of the authorities cited by Palandjian are inapplicable. *See, e.g., Omansky v. Shain,* 313 Mass. 129, 46 N.E.2d 524 (1943) (plaintiff not entitled to collect on promissory note because he had coerced the defendant into signing it). The question here is whether the duress experienced by Palandjian should excuse the lengthy delay in bringing this action.

An initial question is whether, under Massachusetts law, a court may recognize a duress exception to the statutes of limitations under any circumstances. The Massachusetts legislature has specifically defined several circumstances under which the statutes of limitations may be tolled, and duress is not one of them. *See* Mass.Gen.Laws ch. 260. Pahlavi makes a strong argument that this court should not create a duress exception in the absence of legislative direction. *See* 51 Am.Jur.2d, *Limitations of Actions* § 138 at 708 (1970) ("While most courts give recognition to certain implied exceptions arising from necessity, it is now conceded that they will not, as a general rule, read into statutes of limitation an exception which has not been embodied therein, however reasonable such exception may seem and even though the exception would be an equitable one.").

In *Babco Industries, Inc. v. New England Merchants Nat. Bank,* 6 Mass. App. 929, 380 N.E.2d 1327 (1978), the court rejected the plaintiff's "duress exception" argument but stated in dictum, "It is possible to imagine circumstances in which duress might toll the statute." *Id.* at 930, 380 N.E.2d 1327. Likewise, the "duress exception" appears to have been recognized in this District in a closely related case. *Pahlavi v. Palandjian,* No. 83-0437-Z, slip op. at 4-5 (D.Mass. May 30, 1985).

Even where other courts have entertained the view that duress might toll the running of the statute of limitations, however, they have uniformly agreed with the *Babco* court that such an exception would be available only under very unusual circumstances. For example, in *Cooper v. Fidelity-Phila. Trust Co.*, 201 F.Supp. 168 (E.D.Pa. 1962), the plaintiff claimed that the defendants threatened to have him committed to a mental institution if he sought to enforce his legal rights. Noting that "[t]here is little authority for the proposition that 'duress' tolls the running of the statute of limitations," the court held that such threats would not constitute duress. *Id.* at 170; *see Philco Corp. v. Radio Corp. of America*, 186 F.Supp. 155, 162 (E.D.Pa. 1960) (court was "unable to discover a single case which has recognized such a defense in this [anti-trust] area of the law"). A New York appellate court recently summarized the law in this area as follows:

> While other jurisdictions have suggested or assumed the possibility for the purpose of argument that duress might toll the limitations period for causes of action not based on duress, the ultimate resolution in each case was to reject duress as a toll on the facts presented. Whether reluctance to recognize duress as a toll lies in the undesirability of a rule that turns on the reasonableness of reliance upon threats of physical or economic harm, the ease of fabrication of such threats, or simply in the judicial reluctance to create an entirely new defense to the Statute of Limitations, . . . we are not inclined in this case to attempt overthrow of the old rule.

Baratta v. Kozlowski, 94 A.D.2d 454, 459, 464 N.Y.S.2d 803, 807 (1983) (citations omitted).

[4] To toll the running of the statute of limitations, the alleged duress must be directed at preventing the plaintiff from

filing suit or otherwise enforcing his legal rights. *Jastrzebski v. City of New York*, 423 F.Supp. 669, 673 (S.D.N.Y. 1976). In particular, the plaintiff must allege facts of duress which go "beyond those which comprise the alleged torts in suit." *Id.* As noted above, in this case Palandjian certainly has presented evidence of duress in 1971 — Pahlavi converted his property to her own use by threatening him and his family. As unconscionable as these alleged threats are, they do not relate to the filing of any legal action. The record does not contain any evidence of any threat or coercive act by the defendant after 1972, despite the fact that Palandjian communicated regularly with Pahlavi over the course of the next decade. In particular, there is no evidence of any threat or act to deter the filing of this lawsuit.

[5] Palandjian argues that the fear induced by the Pahlavi's actions in the 1970-1972 period lasted continuously for more than 10 years and remained sufficiently strong to dissuade him from filing suit until 1983. Even assuming this fear was reasonable, the plaintiff's subjective fear cannot by itself govern the application of the statute of limitations. A similar argument was rejected by the court in *Jastrzebski v. City of New York*, 423 F.Supp. 669 (S.D.N.Y. 1976):

> Reduced to their essentials, plaintiff's allegations are that he was so intimidated by the tortious acts of defendants that, without any further actions on their parts, he was deprived of a free will to institute his suit against them. This argument, if accepted, would prove too much, for any plaintiff — the victim of an assault, or a battery, or a defamation, for instance — could argue that he was subjectively so intimidated or traumatized by the tortious conduct of his adversary that he was unable to bring suit until some time well beyond the period established by the legislature for the institution of such actions. If, in

> each instance, the trial court were forced to make an *ad hoc* determination of the severity of the plaintiff's subjective fear in order to determine whether to waive the effect of the statute of limitations, then obviously the courts would be burdened by a plethora of preliminary inquiries which could defeat the very purposes which the statutes of limitations were designed to serve.

Id. at 674.

Here Palandjian would have a stronger case if Pahlavi or her agents "had actually approached him at some point and threatened him with dire consequences if he were to institute his litigation." *Id.* As in *Jastrzebski*, Palandjian simply has alleged that he was afraid Pahlavi *might* retaliate if he filed suit. "[T]he mere fact that the plaintiff *anticipated* duress does not establish it as a legal defense." *Id.* (quoting *Philco Corp. v. Radio Corp. of America*, 186 F.Supp. 155, 162 (E.D.Pa. 1960)) (emphasis in original).

Palandjian points out that another judge in this district, on allegations virtually indistinguishable from those in the present case and upon the authority of *Ross v. United States*, 574 F.Supp. 536, 542 (S.D. N.Y. 1983), has ruled that Palandjian's "claim of duress has raised a sufficient issue of fact to withstand plaintiff's motion for summary judgment." *Pahlavi v. Palandjian, supra*, at 1572. With respect, it seems to me that while *Ross* does provide some authority for Palandjian's duress argument, it is distinguishable from this case and thus the averments of the affidavits opposing summary judgment fall short of establishing any material issue of fact.

In *Ross*, the plaintiff was a former prison inmate who alleged that the defendant prison officials mistreated him and wrongfully delayed in granting him parole. When the plaintiff was finally released from prison — following three successful habeas corpus petitions in federal court — he waited until he

was no longer on parole (one year after the limitations period ordinarily would have expired) before filing suit. He alleged that he did not file the action earlier because he was still on parole and he feared retaliation from the defendants, who still had certain legal power over him. The court held that the defendant's alleged facts were sufficient to invoke a duress defense, relying on the principle that a limitations period may be tolled "when a *paramount authority* prevents a person from exercising his legal rights." *Id.* at 542 (emphasis added); *see Davis v. Wilson*, 349 F.Supp. 905, 906 (E.D. Tenn.) (statute of limitations may be tolled a "reasonable time" where the defendant sheriff allegedly took the plaintiff's legal papers from his cell), *affd*, 471 F.2d 653 (6th Cir. 1972).

In this case, Palandjian has not alleged that Pahlavi had any legal or paramount authority over him. According to Palandjian, he was a citizen of the United States and resided in this country continuously after 1970. Although Palandjian has implied that Pahlavi's retaliatory power extended to the United States from 1970 through 1982, he has offered no tangible evidence of such power and this court is not in a position to speculate on that matter. For these reasons, *Ross* does not appear to be compelling authority for purposes of this case.

[6] The ruling by my colleague in *Pahlavi v. Palandjian*, however, is entitled to considerable deference and much greater weight. "If the precedent is from a sitting judge in one's own court and represents [her] mature reflection, the argument in favor of following it rests not only on the appropriate amenities, but also on profounder considerations of equality in the treatment of litigants." Wyzanski, "The Essential Qualities of a Judge," from *The New Meaning of Justice* (1956), reprinted in *Handbook for Judges* 96 (American Judicature Society 1975). These considerations have especial force here where Palandjian himself is a litigant in both cases, and I completely agree that a duress exception can theoretically toll the statutes

of limitations. My reservations flow only from the limited scope I would afford to the reasoning in *Ross* and my own reading of affidavits which are substantially similar in both this case and *Pahlavi v. Palandjian*. Thus the question is simply put: ought this court reject the proffered duress exception and dismiss the action notwithstanding *Pahlavi v. Palandjian*, or ought it follow the reasoning of that decision, deny the motion for summary judgment, and order the case for trial? The first course has the advantage of permitting a prompt appeal to conclusively determine the legal issue; the second results in deciding like cases alike at the trial level.

Fortunately, the flexible provisions of 28 U.S.C. § 1292(b) admit of an accommodation of both concerns. The extent of the duress exception to the running of the Massachusetts statutes of limitations is here "a controlling question of law as to which there is substantial ground for difference of opinion." Therefore, this court will deny the motion for summary judgment upon the grounds expressed in *Pahlavi v. Palandjian* — thus insuring that Palandjian is treated uniformly in each of his two related lawsuits. In view of my reservations as to this result, however, this court is of opinion "that an immediate appeal from [this] order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Accordingly, Pahlavi has ten days after the entry of the denial of this motion for summary judgment to apply to the Court of Appeals for permission to proceed with an appeal therefrom. *Id.* In this fashion, both uniform application of the law and prompt appeal may be accomplished.

C. *Count III (and Count V Revisited)*

Palandjian contends in Count III that Pahlavi has been unjustly enriched by her actions in obtaining "rights and title to the Plaintiff's property" and asks the court to impose a construc-

tive trust for his benefit. Amended Complaint ¶¶ 38, 39. *See Barry v. Covich,* 332 Mass. 338, 342, 124 N.E.2d 921 (1955) (a constructive trust may be employed in equity in order to avoid the unjust enrichment of one party at the expense of the other where the legal title to the property was obtained by fraud or in violation of a fiduciary relationship). Palandjian further contends that the limitations period for this claim in six years and that the cause of action accrued after 1982. In response, Pahlavi argues that Count III is simply a restatement of the conversion claim (Count II) and is therefore barred by the applicable two-year statute of limitations.

[7-9] In Massachusetts, the statutes of limitations applicable to law actions based on contract and tort are also applicable to suits in equity. *Desmond v. Moffie,* 375 F.2d 742, 743 (1st Cir. 1967). The court must look to the "gist of the action" or the essential nature of the plaintiff's claim in determining what statute of limitations to apply. *Hendrickson v. Sears,* 365 Mass. 83, 85, 310 N.E.2d 131 (1974). Although Palandjian's unjust enrichment claim does rest in part on the circumstances of the alleged conversion, it also arises from the breach of contract allegations. "The usual form of action to recover from another money which in equity and good conscience he is not entitled to keep is in contract." *Kagan v. Levenson,* 334 Mass. 100, 103, 134 N.E.2d 415 (1956). Therefore, the six-year statute of limitations for actions of contract applies to Count III. *Brodeur v. American Rexoil Heating Fuel Co.,* 13 Mass.App. 939, 940, 430 N.E.2d 1243 (1982) (six-year limitations period applies to action seeking the declaration of a trust based on an implied contract).

The six-year limitations period does not assist Palandjian, however, unless the cause of action for unjust enrichment accrued after July 1977. Palandjian reasons that his cause of action accrued after 1982, because: while he was forced by Pahlavi in 1971 to give up his shares in the Abadani Jazayer and

Hooraseman companies and to relinquish his rights to the Cessna distributorship, he was told by Pahlavi that she was holding these shares and interests for his benefit. Between 1971 and 1982 he remained in contact with Pahlavi and, each time he requested payment from her, she acknowledged her debts and assured him that eventually he would be paid. According to Palandjian, it was not until after 1982 that he had reason to know Pahlavi "was holding the shares adversely to him." Palandjian is essentially arguing that his cause of action for unjust enrichment did not accrue until the implied trust was "repudiated" or otherwise terminated to his knowledge. *See Brodeur v. American Rexoil Heating Fuel Co.*, 13 Mass.App. 939, 940, 430 N.E.2d 1243 (1982). Although he points to no clear expression of repudiation by Pahlavi in 1982 or 1983, he alleges that it became clear after 1982 that Pahlavi had no intention of paying him.

[10-12] It is true that in the case of express or resulting trusts, the statute of limitations does not begin to run until the trustee has repudiated the trust and knowledge of that repudiation has come home to the beneficiary. *Kearney v. Mechanics Nat. Bank*, 343 Mass. 699, 703, 180 N.E.2d 667 (1962); *see Burns v. Massachusetts Institute of Technology*, 394 F.2d 416, 419 (1st Cir. 1968); *Hanrihan v. Hanrihan*, 342 Mass. 559, 567, 174 N.E.2d 449 (1961). However, Palandjian's claim is not based on an express or resulting trust; instead, he seeks a declaration that a *constructive* trust should be imposed to avoid unjust enrichment. A constructive trust is not a substantive device but merely an equitable remedy to compel a person not justly entitled to property to transfer it to another. *Davies v. Krasna*, 14 Cal. 3d 502, 121 Cal. Rptr. 705, 714, 535 P.2d 1161, 1170 (1975). As a general rule, the "repudiation" requirement does not apply to a constructive trust imposed as a remedy by the court. *Burns v. Massachusetts Institute of Technology*, 394 F.2d 416, 419 (1st Cir. 1968); *see Currier v. Studley*, 159 Mass. 17, 20, 33 N.E. 709 (1893).

Although there is no formal "repudiation" requirement for constructive trusts, "the statute [of limitations] begins to run in favor of the [constructive trustee] against the [beneficiary] . . . at the time when the holder of title begins to hold adversely." *Currier v. Studley,* 159 Mass. 17, 20, 33 N.E.709 (1893); Scott on Trusts § 481.1 (3d ed. 1967).

On this theory, then, the key legal question is when Pahlavi began holding Palandjian's property adversely to him. Given the circumstances under which Palandjian says he was forced to give up his interests in Abadani Jazayer, Hooraseman, and the Cessna distributorship, he can hardly be heard to suggest that Pahlavi acquired and continued to hold these interests on his behalf. According to Palandjian himself, he relinquished his rights unwillingly and only after threats of severe bodily harm by Pahlavi and her representatives against his family and himself.

True, Palandjian also asserts that, at the time Pahlavi forced him to give up his stock, she told him that she would "hold the shares for [him]."[1] But even if it is true that Pahlavi acknowledged her debt and promised to pay it eventually, it does not follow that she became his agent thereby. "In the ordinary case a plaintiff's discussions with a defendant do not postpone the accrual of the cause of action until he is satisfied that the defendant is going to do nothing for him." *Burns v. Massachusetts Institute of Technology,* 394 F.2d 416, 417 (1st Cir. 1968); *see Aetna Casualty & Surety Co. v. Bell,* 390 F.2d 612, 613-14 (1st Cir. 1968) (The rule "cannot be . . . that the cause of action accrues only when the settlement talks break down. This would make the policy limitation close to meaningless."); *see also Dolmetta v. Uintah Nat. Corp.,* 712 F.2d 15,

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[1] Palandjian properly does not assert that these and the related statements by Pahlavi started the statute of limitations running afresh. Mass.Gen.Laws c. 260, § 13. *David v. Zilah,* 325 Mass. 252, 255-56, 90 N.E.2d 343 (1950) (Spalding, J.).

19 (2d Cir. 1983) (action for unjust enrichment due to defendants' fraudulent acquisition of stock accrued at the time defendants acquired such stock).

[13] Of course, faced with Pahlavi's motion for summary judgment, Palandjian is entitled to have his affidavits in opposition read indulgently and this court must draw in his favor such inferences as are reasonable to ascertain whether a genuine issue in fact exists. *Hahn v. Sargent*, 523 F.2d 461, 464 (1st Cir. 1975), *cert. denied*, 425 U.S. 904, 96 S.Ct. 1495, 47 L.Ed.2d 754 (1976). Moreover, this court acknowledges that on this record, it is a close question whether a reasonable jury could wholly disregard the claim of duress (thus demolishing all the other counts of the complaint — except, perhaps, Count V) and nevertheless, based solely upon what remains, conclude that Pahlavi was genuinely acting on Palandjian's behalf and only renounced her trust in 1982. Certainly, this court would not so find.

[14] It is unnecessary, however, to determine the matter upon the factual sufficiency of the opposing affidavits as a more basic concern prevents a ruling for Palandjian on the theory advanced above. While Palandjian has every right to plead in the alternative, Fed.R.Civ.P. 8(a), the time for the maintenance of inconsistent factual positions has long since passed when, as is the case here, the court is required to resolve a motion for summary judgment made after such extensive discovery that neither party seeks to advance additional evidence pursuant to Fed.R.Civ.P. 56(f).

> Long and firmly established principles of common law provide that . . . a man should not be permitted 'to blow hot and cold' with reference to the same transaction, or insist, at different times, on the truth of each of two conflicting allegations, according to the promptings of his private interests.

Broom, *A Selection of Legal Maxims* 119 (2d ed. 1850) (quoting Lord Kenyon). This doctrine was recognized by the United States Supreme Court in *David v. Wakelee*, 156 U.S. 680, 15 S.Ct. 555, 39 L.Ed. 578 (1895), where the Court stated:

> It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.

Id. at 689, 15 S.Ct. at 558.[2]

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[2] In *Callanan Road Improvement Co. v. United States*, 345 U.S. 507, 73 S.Ct. 803, 97 L.Ed. 1206 (1953), the Callanan Road Improvement Co. had applied to the I.C.C. for the purchase of an amended certificate to operate freight boats. The Commission authorized the transfer. After the transfer, Callanan filed suit to set aside a modification of the certificate effected by the Commission before the transfer. The Court held that Callanan was estopped to deny the Commission's power to issue the certificate in its modified form, stating:

> The appellant cannot blow hot and cold and take now a position contrary to that taken in the proceedings it invoked to obtain the Commission's approval. If the appellant then had taken the position it seeks now, the Commission might conceivably have refused its approval of the transfer. The appellant accepted the transfer with the limitations contained in the certificate.

345 U..S. at 513, 73 S.Ct. at 806.

Professor Moore has discussed the doctrine, sometimes referred to as "judicial estoppel" or the doctrine of "preclusion against inconsistent positions," as follows:

> Even where the facts will not permit the application of res judicata, collateral estoppel, or the election rule against inconsistent remedies, a party may be precluded by a prior position taken in litigation from later

Since, for the reasons discussed above, Palandjian prevails on the claim of duress, his claim based upon the alleged repu-

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adopting an inconsistent position in the course of a judicial proceeding. Though the preclusion doctrine is sometimes referred to as 'judicial estoppel' or 'estoppel by oath,' and though it is frequently expressed in language sounding of estoppel in pais, numerous cases illustrate the existence of a doctrine forbidding inconsistent positions, usually as to facts, which operates independently of equitable estoppel.

Many cases forbidding inconsistent positions in judicial proceedings may be grouped conveniently into two classes: those where a party seeks to contradict his own sworn statements made in prior litigation in which he was a party or a witness; and those where the prior inconsistent position was not taken under oath. In the first class of cases the rule against self-contradiction is frequently said to rest upon a policy of preserving the sanctity of the oath, while the other group of cases involves a more general consideration of the orderly administration of justice and regard for the dignity of judicial proceedings. *Both types of preclusion seem to fall, generically, within a universal judicial reluctance to permit litigants to 'play fast and loose' with courts of justice according to the vicissitudes of self-interest.*

1B *Moore's Federal Practice* ¶ 0.405[8] (2d ed. 1974) (emphasis added).

In the case Professor Moore cites for the last quoted sentence, *Scarano v. Central R.R. Co. of New Jersey*, 203 F.2d 510 (3d Cir. 1953), Scarano, a railroad worker, had asserted in F.E.L.A. proceedings that he would be unable to work because of injuries incurred on the job. A verdict for a sum of over eleven times his annual salary was returned. The defendant moved for a new trial but the case was settled before a decision on the motion was rendered for a sum of approximately nine times Scarano's annual salary. Subsequently, Scarano sued for breach of his collective bargaining agreement because the railroad refused to reinstate him. The Third Circuit affirmed the district court's dismissal of the action, stating:

The 'estoppel' of which, for want of a more precise word, we here speak is but a particular limited application of what is sometimes said to be a general rule that 'a party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same or a successive series of suits.' II Freeman on Judgments § 631 (5th ed. 1925). Whether the correct doctrine is that broad we do not decide. The rule we apply here need be and is no broader than this. A plaintiff who has obtained relief from an adversary by

diation of a constructive trust or fiduciary relationship ought not be entertained. Indeed, even were the result different and were the duress exception to prove unavailing, this court would rule that the present record is insufficient to raise a genuine issue concerning whether, after 1971, Pahlavi was other than a party totally adverse to Palandjian's interests.

For the reasons expressed above, however, this motion for summary judgment must be denied.

SUPPLEMENTAL MEMORANDUM

On August 16, 1985, this court denied the motion of the defendant Pahlavi for summary judgment, albeit with reservations, after analyzing whether the plaintiff Palandjian's claim of duress was adequate to toll the relevant statutes of limitations. Both parties promptly sought reconsideration, Pahlavi's counsel correctly observing that were Pahlavi not to prevail on her statute of limitations argument, she is nevertheless en-

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> asserting and offering proof to support one position may not be heard later in the same court to contradict himself in an effort to establish against the same adversary a second claim inconsistent with his earlier contention. *Such use of inconsistent positions would most flagrantly exemplify that playing 'fast and loose with the courts' which has been emphasized as an evil the courts should not tolerate. See Stretch v. Watson*, 1949, 6 N.J. Super. 456, 469, 69 A.2d 596, 603, reversed in part on other grounds, 5 N.J. 268, 74 A.2d 597. And *this is more than affront to judicial dignity. For intentional self-contradiction is being used as a means of obtaining unfair advantage in a forum provided for suitors seeking justice.*

203 F.2d at 512-13 (emphasis added).
See also Smith v. Montgomery Ward, 388 F.2d 291 (6th Cir. 1968), *cert. denied*, 393 U.S. 871, 89 S.Ct. 159, 21 L.Ed.2d 139 (1968); *Smith v. Boston Elevated Ry. Co.*, 184 F. 387 (1st Cir. 1911); *Teamsters Local No. 25 v. Penn. Transportation Corp.*, 359 F.Supp. 344 (D.Mass. 1973); *Wood v. United Air Lines, Inc.*, 216 F.Supp. 340 (E.D.N.Y. 1963).

titled to a ruling on her statute of frauds defense to Count I — the contract count. After further hearing, this supplemental memorandum addresses that issue.

The Statute of Frauds Defense

Pahlavi has argued that Palandjian's breach of contract claim is barred by the Massachusetts statute of frauds, which generally provides that no action shall be brought upon an agreement that is not to be performed within one year unless that agreement is in writing and signed by the party charged with a breach. Mass.Gen.Laws ch. 259, § 1. According to Pahlavi, the Kazar Shahr development could not have been completed within one year after the alleged oral contract was made, and therefore the contract claim is barred. Palandjian concedes that the entire Kazar Shahr project could not have been completed within one year, but argues that the obligations of the parties under the alleged agreement could have been concluded within that period. Palandjian further contends that Pahlavi is estopped from asserting a statute of frauds defense. Because this court holds that the estoppel doctrine may apply to this case, it is unnecessary to decide whether the alleged contract could have been performed within one year.

The Restatement (Second) of Contracts § 139(1) sets forth the circumstances under which a defendant may be estopped from invoking a statute of frauds defense to a claim falling within the scope of the statute:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

Restatement (Second) of Contracts § 139(1) (1981). Section 139(2) lists several factors which are significant in determining "whether injustice can be avoided only by enforcement of the promise."

The Massachusetts courts have held that the estoppel doctrine may apply in the statute of frauds context. *See Cellucci v. Sun Oil Co.*, 2 Mass. App. 722, 728, 320 N.E.2d 919 (1974) ("[A]n estoppel, if appropriately applied in this case, would also preclude [the defendant] from asserting the affirmative defense of the Statute of Frauds."), *aff'd*, 368 Mass. 811, 331 N.E.2d 813 (1975). In *Hickey v. Green*, 14 Mass.App. 671, 442 N.E.2d 37 (1982), the Appeals Court noted that "the earlier Massachusetts decisions laid down somewhat strict requirements for an estoppel precluding the assertion of the Statute of Frauds," but looked to the Restatement (Second) of Contracts for a statement of the rule presently "applicable in most jurisdictions in the United States." *Id.* at 673, 442 N.E.2d 37 (applying the rule of Restatement (Second) of Contracts § 129, which is substantially similar to § 139(1), in a case involving a contract for the sale of real estate); *see Goeken v. Kay*, 751 F.2d 469, 472, 474 (1st Cir. 1985) (quoting the Restatement § 139(1), and affirming a decision of the district court which "assumed for the sake of argument" that Massachusetts law permitted recovery upon reasonable reliance on an oral promise, notwithstanding the statute of frauds).

The court in *Cellucci v. Sun Oil Co., supra*, summarized the "essential factors giving rise to an estoppel":

> (1.) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made. (2.) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made. (3.) Detriment to such person as a consequence of the act or omission.

2 Mass. App. at 728, 320 N.E.2d 919 (quoting *Industrial Bankers of Mass. Inc. v. Reid Murdoch & Co.*, 297 Mass. 119, 124, 8 N.E.2d 19 (1937)) (citations omitted); *see Loranger Construction Corp. v. E.F. Hauserman Co.*, 6 Mass. App. 152, 154, 374 N.E.2d 306 (Keville, J.), *aff'd*, 376 Mass. 757, 384 N.E.2d 176 (1978).

[15-17] Pahlavi points out that neither Palandjian's affidavits nor indeed the allegations in his complaint suggest fraud in the inducement or misrepresentation. This is not essential for estoppel to apply. "Recovery in these circumstances requires no more than a promise on which the promisee could reasonably have placed reliance; and attention is to be focused upon the reasonableness of that reliance." *Loranger Construction Corp. v. E.F. Hauserman Co.*, 6 Mass. App. 152, 159, 374 N.E.2d 306, *aff'd*, 376 Mass. 757, 761, 384 N.E.2d 176 (1978) (Braucher, J.) "When a promise is enforceable in whole or in part by virtue of reliance, it is a 'contract,' and it is enforceable pursuant to a 'traditional contract theory' . . . .").[1]

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[1] Pahlavi attempts to distinguish *Loranger* on the basis that it involved a "promissory estoppel" theory, a doctrine which typically applies where a court is asked to "create" a contract in the absence of consideration. *See* Restatement (Second) of Contracts § 90 (1981). Although the traditional "promissory estoppel" doctrine differs from the type of estoppel at issue here, the principles discussed in *Loranger* are nonetheless relevant to this case. *See Loranger*, 6 Mass. App. 152, 159, 374 N.E.2d 306 ("it is doubtful that the prohibitions of the Statute of Frauds . . . are applicable where recovery is otherwise warranted on the basis of promissory estoppel") (dictum), affirmed without addressing this issue, 376 Mass. 757, 764, 384 N.E.2d 176 (1978).

If the equitable doctrine of estoppel was applied in this case, the remedy available to the plaintiff might be restricted, even though his action at law survived. *See* Restatement (Second) of Contracts §§ 90, 139 (1981) ("The remedy granted for breach may be limited as justice requires."); *see also Chedd-Angier Production Co. v. Omni Publications Int'l, Ltd.*, 756 F.2d 930, 937 (1st Cir. 1985) ("Under § 90 of the Restatement (Second) of Contracts, adopted in its tentative form by the Massachusetts court in *Loranger*, damages available under promissory estoppel range from full contract damages to reliance or restitution damages."). Where recovery rests solely upon the justified reliance

[18, 19] Each of the factors necessary to show estoppel may be present in this case. Palandjian has submitted competent evidence indicating that Pahlavi made specific representations regarding the Kazar Shahr project which reasonably induced Palandjian to invest substantial time, money, and other resources toward development of the project. That evidence, if believed, is certainly sufficient to show that Palandjian changed his position to his substantial detriment. Whether the elements necessary to create an estoppel exist is an issue of fact. *Moran v. Town of Mashpee,* 17 Mass. App. 679, 681, 461 N.E.2d 1231 (1984); *Danielczuk v. Ferioli,* 7 Mass. App. 914, 388 N.E.2d 724 (1979) ("The assertion of an estoppel raises factual questions of reliance and reasonableness that should have been left for resolution at trial."). The court is not in a position to decide at this stage of the case that estoppel cannot be shown.

For these reasons, the court rules that, upon this record, the statute of frauds does not bar Palandjian's contract claim.

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of the promisee, without any suggestion of fraud, it would seem equitable that such recovery be measured by the extent of the reliance interest, i.e. restitution, rather than by conferring the benefit of the bargain. *See* Restatement (Second) of Contracts §§ 90 comment d. 139 comment d, 363 comment b (1981).

Appendix Q.

United States Court of Appeals

For the First Circuit

No. 86-1269.

PETROS A. PALANDJIAN,
Plaintiff, Appellant,
v.
ASHRAF PAHLAVI,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, U.S. District Judge]

Before
Campbell, Chief Judge,
Coffin and Bownes, Circuit Judges.

M. Frederick Pritzker with whom Elizabeth A. Ritvo, and Brown, Rudnick, Freed & Gesmer, were on brief for appellant.

Harvey Weiner with whom Peabody & Arnold, William E. Jackson, James E. Clapp and Milbank, Tweed, Hadley & McCloy were on brief for appellee.

December 8, 1986

COFFIN, Circuit Judge. The facts of this case are set forth in detail in the district court's opinion, *Palandjian* v. *Pahlavi*, 614 F. Supp. 1569, 1571-73 (D.C. Mass. 1985), and we therefore recite them only in limited fashion as necessary for our discussion. The primary question before us is whether plaintiff's allegations of duress are sufficient to avoid summary judgment for defendant on her statute of limitations defense. We conclude that they are not, and therefore affirm.

Appellant argues that he was prevented from filing suit for more than a decade out of fear that doing so would result in grave harm to himself and his family. He bases his alleged fear on defendant's threats and actions during the 1970-1972 period when defendant forced him to turn over to her the Abadani Jazayer development company, the Hooraseman Cessna distributorship and the stocks for those companies. For example, appellant's father, who held the stocks at his home, testified in deposition that when defendant's assistant demanded the shares, the assistant stated: "We will have you killed," and "If you and your son and family want to live here without any danger give me the stocks."

We make two assumptions for purposes of this case. The first is that Massachusetts courts would recognize duress as tolling the statute of limitations in at least certain situations. *See Babco Industries* v. *New England Merchants National Bank*, 6 Mass. App. Ct. 929, 930, 380 N.E.2d 1327 (1978) ("It is possible to imagine circumstances in which duress might toll the statute . . . ."). *But see* 51 Am. Jur. 2d Limitation of Actions § 138 at 708 (1970) ("[Most courts] will not, as a general rule, read into statutes of limitation an exception which has not been embodied therein, however reasonable such exception may seem and even though the exception would be an equitable one."). Second, we assume that Massachusetts would use a subjective standard for evaluating fear. *See, e.g.*, *Omansky* v. *Shain*, 313 Mass. 129, 130 (1943) ("[T]he evidence

warranted a finding that the plaintiff obtained the note by threats that were in fact sufficient to overcome the will of the defendant, in the condition in which he was, whether or not they would have been sufficient to overcome the will of a person of ordinary courage and firmness."). *See also Allen* v. *Plymouth*, 313 Mass. 356, 360 (1943).

Even with these assumptions, however, we can not fault the district court's conclusion that the facts taken in the light most favorable to appellant are insufficient as a matter of law to establish duress that would toll the statute of limitations. Courts almost universally have rejected duress as a toll on the statute of limitations when, as in this case, duress is not an element of the underlying cause of action.[1] *See* 121 A.L.R. 1294, 1295 (1939); *Baratta* v. *Kozlowski*, 94 A.D.2d 454, 464 N.Y.S.2d 803, 807 (1983). We have found only one case in which a court tolled the limitations period in such circumstances. In *Ross* v. *United States*, 574 F. Supp. 536 (S.D.N.Y. 1983), the plaintiff was a former prison inmate who alleged violations of his fifth and eighth amendment rights while he was in prison. The plaintiff claimed that he did not file the action within the statute of limitations period because he was still on parole and feared retaliation. In support of his fear, he cited various alleged constitutional deprivations while he was in prison. The court, citing to precedent that "a limitations period is tolled when a paramount authority prevents a person from exercising his legal rights," found these allegations sufficient to survive dismissal on statute of limitations grounds. *Id.* at 542.

Ross is helpful to appellant because it accepts tolling the statute of limitations on the basis of duress even without an

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[1] Appellant's claims were for breach of contract, conversion, unjust enrichment, quantum meruit, and breach of fiduciary duty. His causes of action are to be contrasted with cases in which parties seek to avoid apparent legal obligations on the ground that they entered into the commitments under duress.

explicit threat directed at preventing the plaintiff from filing suit or otherwise enforcing his legal rights. *Cf. Jastrzebski* v. *City of New York*, 423 F. Supp. 669, 673-74 (S.D.N.Y. 1976). Nevertheless, we are convinced that Massachusetts courts would reject appellant's allegations as insufficient to establish duress against the filing of a lawsuit. We reach that conclusion because of the nature of appellant's relationship with defendant after 1971. Appellant had regular contact with defendant between 1971 and 1982, speaking with her by phone and periodically meeting with her in Geneva or New York, and during these meetings, appellant asked about the money due him. Appellant's lawyer accompanied him to one of these meetings in 1979. Thus, even though appellant repeatedly engaged in adversary contact with defendant, raising the issue of the money allegedly owed to him, he does not allege any threat of harm aimed at curtailing his attempts to secure payment. Rather, his complaint states that on two occasions, including the meeting attended by his attorney, defendant asked for more time to pay her debts. On neither occasion does appellant allege that defendant threatened retaliation if he filed a lawsuit instead of waiting for her payment.

Although the threats made between 1970 and 1972 might otherwise suffice to establish duress against the filing of a lawsuit, we conclude that Massachusetts would not give them such significance in light of this subsequent history. Indeed, it strains logic to rest a claim of duress against filing a lawsuit on threats unconnected to appellant's pursuit of his legal rights when appellant, in fact, repeatedly took actions similar in kind to filing suit without provoking the slightest suggestion of a threat. There is nothing in the record to show that defendant would have reacted differently to the formality of filing a lawsuit than she did to appellant's demands for payment, including one made while he was accompanied by a lawyer. Even if appellant subjectively feared retaliation from defendant

if he filed a lawsuit, we believe Massachusetts would rule that he failed as a matter of law to establish that he was actually under duress. Thus, the district court correctly granted summary judgment for defendant on this issue.

Appellant also questions the district court's dismissal of his claims for unjust enrichment and breach of fiduciary duty. We conclude that the statute of limitations issue also is dispositive of these claims because, in the district court's words, "the present record is insufficient to raise a genuine issue whether, after 1971, Pahlavi was other than a party totally adverse to Palandjian's interest."[2] Thus, these causes of action would have arisen in 1971, and would have been time barred at the time appellant filed his lawsuit.

For the foregoing reasons, the judgment of the district court is affirmed.

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[2] The district court did not specifically dismiss the unjust enrichment and breach of fiduciary duty claims on statute of limitations grounds. The court dismissed those claims on the theory that the factual basis for these claims was inconsistent with appellant's claim of duress. Appellant makes the argument that it is not inconsistent to say that although property was taken by duress in 1971, Pahlavi did not unjustly enrich herself until 1982 or thereabouts when she ceased to acknowledge that the property was his. It seems clear to us, however, that in light of the duress involved in obtaining the property, appellant had fully as much basis for imposing a constructive trust in 1971 as at any time thereafter. In any event, the statute of limitations defense is a sufficient basis for affirmance.

No. 86-1450

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

PETROS A. PALANDJIAN,

Petitioner,

v.

ASHRAF PAHLAVI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

In opposing a motion for summary judgment grounded upon the Massachusetts statute of limitations, did petitioner introduce evidence sufficient to raise a triable issue of "duress" for tolling purposes under Massachusetts law?

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JUDGMENT BELOW

Since the judgment sought to be reviewed is not included in Petitioner's Appendix ("Pet. App."), it is reproduced in the Appendix to this brief, at A1. This judgment is listed among "Decisions Without Published Opinions" at 808 F.2d 1513.

STATEMENT OF THE CASE

Proceedings Below

This diversity case, commenced in 1983, concerned alleged dealings between petitioner Petros A. Palandjian ("Palandjian"), a Massachusetts construction industry executive, and respondent Ashraf Pahlavi ("Pahlavi"), a sister of the late Shah of Iran, from 1966 to 1971. Palandjian alleged that in 1966 he entered into an oral contract with Pahlavi to

develop a seaside resort community in Iran, but that Pahlavi breached the contract in 1970 by expelling Palandjian from the project. (Complaint ¶¶ 6-9, 19-20, 34; Pet. App. 37a-40a, 42a.) Palandjian further alleged that in 1970 and 1971 Pahlavi's representatives coerced Palandjian into relinquishing partial ownership interests in two Iranian companies, and thereby converted his property. (Complaint ¶¶ 21-22, 36; Pet. App. 40a, 43a.)

Pahlavi moved for summary judgment on the ground—among others—that the action was barred by the applicable Massachusetts statutes of limitations for contract (6 years) and tort (2 years). The last of Palandjian's claims for relief would have accrued in 1971, when Palandjian, in the presence of his attorney, allegedly signed away certain property rights in response to veiled threats by an alleged representative—since deceased—of Pahlavi. (Complaint ¶ 22; Pet. App. 40a.) Palandjian asserted that it was not until 1983 that he felt he could file suit on these claims without fear of retaliation (Palandjian Affidavit ¶¶ 24-25; Pet. App. 14a), and argued that the Massachusetts statutes of limitations were therefore tolled by reason of "duress." But he did not come forward with any evidence that he was actually subjected to duress at any time in the dozen years that he withheld suit following the accrual of his final claim for relief. On the contrary, Palandjian's own description of his relationship with Pahlavi during that period was as follows:

> From 1971 through 1982, I remained in contact with Pahlavi, speaking with her by phone and periodically meeting with her in Geneva and New York. During these calls and meetings, I raised the issue of the monies she owed me . . . ; she acknowledged her debts to me and said I would be paid.*

(Palandjian Affidavit ¶ 22; Pet. App. 13a.)

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* Under Massachusetts law, such an alleged oral acknowledgment would have no effect on the running of the statute of limitations. Mass. Gen. Laws ch. 260, § 13.

Decisions Below

The District Court for the District of Massachusetts held that, since "[t]he record does not contain any evidence of any threat or coercive act by the defendant after 1972, despite the fact that Palandjian communicated regularly with Pahlavi over the course of the next decade," and "[i]n particular, there is no evidence of any threat or act to deter the filing of this lawsuit," "the averments of the affidavits opposing summary judgment fall short of establishing any material issue of fact" warranting a trial on Palandjian's claim of duress. (Pet. App. 81a-82a.) Accordingly—after some further litigation of no significance for present purposes—the District Court entered summary judgment for Pahlavi, saying:

> While circumstances may be imagined where duress might toll a statute of limitations under the law of Massachusetts, even a generous reading of the plaintiff's affidavits and supporting materials does not, upon the reasoning expressed in this court's original memorandum, justify the application of a duress exception under Massachusetts law in these circumstances.

(Pet. App. 60a.)

The Court of Appeals affirmed almost summarily. In a brief opinion labeled "Not for Publication," that court, likewise noting the absence of any allegation of threats or coercion during the 12-year delay in filing suit despite Palandjian's own avowal that he repeatedly confronted Pahlavi about her alleged debts to him during that time, unanimously concluded:

> Even if appellant subjectively feared retaliation from defendant if he filed a lawsuit, we believe Massachusetts would rule that he failed as a matter of law to establish that he was actually under duress.

(Pet. App. 99a-100a.)

REASONS FOR DENYING THE WRIT

Petitioner makes no claim that the decision of the Court of Appeals creates a conflict among the circuits, or raises an issue of importance to anyone other than the parties. The sole ground advanced for review is that the court below misapplied well-settled principles of procedure for deciding summary judgment motions, and thus reached an incorrect result. But in fact the result in this case was reached by correctly following routine federal procedure to decide a narrow question of Massachusetts law as applied to Palandjian's unique factual allegations.

I. THE COURTS BELOW FOLLOWED PROPER FEDERAL PROCEDURE

Palandjian characterizes this case as involving an issue of interpretation and application of Rule 56 of the Federal Rules of Civil Procedure. (Petition i.)* Specifically, he asserts that the court below failed to follow the universally-recognized principles that the evidence on a motion for summary judgment must be viewed in the light most favorable to the party opposing the motion (*id.* 12-17), and that summary judgment is seldom possible where resolution of a material issue would require assessment of a party's credibility or state of mind (*id.* 17-20).

But these principles were never at issue, because for the purposes of Pahlavi's motion both of the lower courts accepted as true Palandjian's version of the facts—including his representations as to his own subjective fear.

Thus the courts below took it as given that Palandjian had been subjected to actual coercion causing him to give up certain property in 1970 and 1971. Pet. App. 81a (District Court); *id.* 97a (Circuit Court). And they credited Palandjian's assertion that he refrained from filing suit from 1971

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* This purported federal question is raised here for the first time. Not one of the fifteen federal cases cited in the petition was referred to by Palandjian in either of the courts below.

until 1983 because he feared retaliation. *Id.* 81a (District Court); *id.* 99a-100a (Circuit Court). They concluded, however, that under Massachusetts law the mere existence of subjective fear from 1971 to 1983 would not suffice to show that Palandjian was under duress during that time. *Id.* 81a (District Court); *id.* 99a-100a (Circuit Court). In the absence of any evidence—or even any allegation—of threats or coercion of any kind during the relevant period, there was no factual basis for Palandjian's tolling claim as a matter of Massachusetts law; hence summary judgment was required. *Celotex Corp. v. Catrett*, ___ U.S. ___, 106 S. Ct. 2548, 2555 (1986).

II. THE DECISION BELOW DEPENDED SOLELY UPON APPLICATION OF STATE LAW TO UNIQUE FACTS

The decision below is confined to the particular factual allegations of this case. By Palandjian's own account, he continued to deal with Pahlavi for 12 years following the accrual of his final claim for relief, during which time, as the Court of Appeals noted, he "repeatedly took actions similar in kind to filing suit without provoking the slightest suggestion of a threat." (Pet. App. 99a.) It was specifically "in light of this subsequent history" that the court below concluded that Massachusetts would not overlook Palandjian's disregard of its statutes of limitations. (*Id.*)

In view of the limited significance of this decision, the Court of Appeals ordered that its opinion not be published, thereby bringing it within that court's rule prohibiting citation of its unpublished opinions as authority in unrelated cases. (Rule 14 of the First Circuit Rules, reprinted in full in the Appendix to this brief at A2.) As the court explains in that rule, its determination not to write a full opinion for publication "mean[s] that no new points of law, making the decision of general precedential value, are believed to be involved."

In holding that Palandjian's claims regarding alleged events of 16 to 21 years ago are barred, the court below merely recognized that, in this dispute between Palandjian

and Pahlavi, Massachusetts would find no reason to set aside the important policies underlying all statutes of limitations as articulated by this Court:

> Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.

Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-49 (1944).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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April 7, 1987

APPENDIX

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States Court of Appeals
FOR THE FIRST CIRCUIT

No. 86-1269.

PETROS A. PALANDJIAN,
Plaintiff, Appellant.

v.

ASHRAF PAHLAVI,
Defendant, Appellee.

JUDGMENT

Entered: December 8, 1986

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

FRANCIS P. SCIGLIANO
Clerk.

By: RICHARD W. GORDON
Chief Deputy Clerk

RULE 14 OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RULE 14. OPINIONS

Because of the increase in filings, the court finds itself unable to write opinions, or full opinions, in every case. The absence of such does not necessarily mean that the case is considered unimportant. It does mean that no new points of law, making the decision of general precedential value, are believed to be involved.

Because unpublished memoranda and opinions of this and other courts usually fail to disclose fully the rationale of the court's decision, and because they are not uniformly available to all persons, they are never to be cited in unrelated cases, unless they are in the process of being published. For this court's Plan for Publication of Opinions see Appendix B.

(4)

No. 86-1450.

In the
Supreme Court of the United States.

OCTOBER TERM, 1986.

PETROS A. PALANDJIAN,
PETITIONER,

v.

ASHRAF PAHLAVI,
RESPONDENT.

Petitioner's Reply Brief.

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Rules.

No. 86-1450.

In the
Supreme Court of the United States.

OCTOBER TERM, 1986.

PETROS A. PALANDJIAN,
PETITIONER,

v.

ASHRAF PAHLAVI,
RESPONDENT.

Petitioner's Reply Brief.

Reasons for Granting the Writ.

I. PALANDJIAN COULD NOT HAVE RAISED A FEDERAL QUESTION UNTIL THE FIRST CIRCUIT COMMITTED AN ERROR WHICH CREATED A FEDERAL QUESTION.

A party on appeal labors under no burden to anticipate that he will lose and to predict, and therefore argue, against a possible error that the appeals court may commit. Respondent, Ashraf Pahlavi ("Pahlavi"), notes in her Brief in Opposition that the federal question raised by Petitioner, Petros A. Palandjian ("Palandjian"), is raised here for the first time (Respond-

dent's Brief in Opposition at 4). That is true. However, Pahlavi fails to note what should be self evident: that Palandjian could not have raised this federal issue[1] here on review until the First Circuit committed the error.

II. The First Circuit's Decision Not to Publish Its Opinion Is Not Relevant to the Supreme Court's Determination of Whether to Grant Certiorari.

Pahlavi's use of Rule 14 of the First Circuit Rules[2] to dissuade the Supreme Court from granting certiorari lacks any foundation in law. The First Circuit's local rules governing the publishing of opinions are not relevant to the Supreme Court's determination of whether to grant certiorari. The local rules are merely an administrative determination used "in the interests both of expedition in the particular case, and of saving time and effort in research on the part of future litigants" (*see* Loc. R. 36.1 at A-1). An entirely different rule governs the determination of whether to grant certiorari (*see* Sup. Ct. R. 17).

To speculate, as Pahlavi has done, about why the First Circuit did not publish its opinion and to ask this Court to be guided and governed by such speculation in deciding whether to grant certiorari is wholly without merit. This Court should not permit a local decision not to publish an opinion, based on a

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[1] The issue raised by Palandjian in his Petition is "Whether the granting of summary judgment is erroneous where the trial court must make a factual determination concerning the opposing party's state of mind and where such factual determination was based on inferences which did not favor the opposing party?"

[2] Respondent has cited and appended a Rule which is no longer in existence. It was superseded on September 1, 1986, when the First Circuit published its most recent local rules (*see* Local R. 36.1 and 36.2 at A-1, which have replaced Rule 14 and Appendix B, which is cited therein).

local rule which may differ from rules in other circuits, to create a presumption against the granting of certiorari.

Conclusion.

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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Appendix.

Loc. R. 36.1 OPINIONS. The volume of filings is such that the court cannot dispose of each case by opinion. Rather, it makes a choice, reasonably accommodated to the particular case, whether to use an order, memorandum and order, or opinion. An opinion is used when the decision calls for more than summary explanation. However, in the interests both of expedition in the particular case, and of saving time and effort in research on the part of future litigants, some opinions are rendered in unpublished form; that is, the opinions are directed to the parties but are not otherwise published, and may not be cited in unrelated cases. As indicated in Local Rule 36.2, the court's policy, when opinions are used, is to prefer that they be published, but in limited situations, described in Local Rule 36.2, where opinions are likely not to break new legal ground or contribute otherwise to legal development, they are issued in unpublished form.

Loc. R. 36.2 PUBLICATION OF OPINIONS. The Judicial Council of the First Circuit, pursuant to resolution of the Judicial Conference of the United States, hereby adopts the following plan for the publication of opinions of the United States Court of Appeals for the First Circuit.

(a) STATEMENT OF POLICY. In general, the court thinks it desirable that opinions be published and thus be available for citation. The policy may be overcome in some situations where an opinion does not articulate a new rule of law, modify an established rule, apply an established rule to novel facts or serve otherwise as a signficant guide to future litigants. (Most opinions dealing with claims for benefits under the Social Security Act, 42 U.S.C. § 205(g), will clearly fall within the exception.)

(b) MANNER OF IMPLEMENTATION

1. As members of a panel prepare for argument, they shall give thought to the appropriate mode of disposition (order, memorandum and order, unpublished opinion, published opinion). At conference the mode of disposition shall be discussed and, if feasible, agreed upon. Any agreement reached may be altered in the light of further research and reflection.

2. With respect to cases decided by a unanimous panel with a single opinion, if the writer recommends that the opinion not be published, the writer shall so state in the cover letter accompanying the draft. After an exchange of views, should any judge remain of the view that the opinion should be published, it shall be.

3. When a panel decides a case with a dissent, or with more than one opinion, the opinion or opinions shall be published unless all the participating judges decide against publication. In any case decided by the court in banc the opinion or opinions shall be published.

4. Any party or other interested person may apply for good cause shown to the court for publication of an unpublished opinion.

5. If a District Court opinion in a case has been published, the order of court upon review shall be published even if when the court does not publish an opinion.

6. Unpublished opinions may be cited only in related cases. Only published opinions may be cited otherwise.

7. Periodically the court shall conduct a review in an effort to improve its publication policy and implementation.